FEDERAL DEPOSIT INSURANCE CORPORATION

ADVISORY COMMITTEE ON SYSTEMIC RESOLUTION

MEETING

THURSDAY,
DECEMBER 6, 2018

The Advisory Committee convened at 9:00 a.m. in the Federal Deposit Insurance Corporation Board Room, 550 17th Street, NW, Room 6010, Washington, D.C., Jelena McWilliams, Chairman, presiding.
Present:

Jelena McWilliams, Chairman, FDIC
Anat R. Admati, George G.C. Parker Professor of Finance and Economics, Graduate School of Business, Stanford University
Sheila C. Bair, Former Chairman, FDIC
Michael Bodson, President and CEO, Depository Trust & Clearing Corporation
Charles A. Bowsher, Former Comptroller of the United States
Shelley C. Chapman, United States Bankruptcy Judge, Southern District of New York
H. Rodgin Cohen, Senior Chairman, Sullivan & Crowell, LLP
Peter R. Fisher, Senior Fellow, Center for Global Business and Government, Tuck School of Business, Dartmouth University
Martin J. Gruenberg, FDIC Board of Directors
Richard J. Herring, Co-Director, The Wharton Financial Institutions Center and Professor of Finance, The Wharton School, University of Pennsylvania
Donald Kohn, Former Vice Chairman, Board of Governors of the Federal Reserve System and Senior Fellow, Economic Studies Program, Brookings Institution
John S. Reed, Former Chairman and CEO of Citigroup and Former Chairman, Corporation of Massachusetts Institution of Technology
Gary Stern, Former CEO and President, Federal Reserve Bank of Minneapolis and Chairman of the Board of Directors, National Council on Economic Education
ALSO PRESENT:

SUSAN BAKER, Deputy Director, Office of Complex Financial Institutions
ALEXANDRA BARRAGE, Associate Director, Office of Complex Financial Institutions
RONALD CRAWLEY, Senior Resolution Policy Specialist, Office of Complex Financial Institutions
RICARDO DELFIN, Director, Office of Complex Financial Institutions
ELIZABETH FALLOON, Deputy Director, Office of Complex Financial Institutions
JOANNE FUNGAROLI, Associate Director, Office of Complex Financial Institutions
HERBERT HELD, Deputy Director, Office of Complex Financial Institutions
BRUCE HICKEY, Supervisory Counsel, Legal Division
MICHAEL MORGAN, Corporate Expert, Division of Risk Management Supervision
ARTHUR MURTON, Senior Advisor to the Chairman, FDIC
PENFIELD STARKE, Assistant General Counsel, Legal Division
NATHAN STEINWALD, Section Chief, Office of Complex Financial Institutions
RYAN TETRICK, Associate Director, Office of Complex Financial Institutions
DAVID WALL, Assistant General Counsel, Legal Division
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CHAIRMAN McWILLIAMS: Good morning, everybody. So I have an opening statement but before I get started I'm just really excited because this has never happened before although I do feel like I'm being watched so.

Good morning. I'm pleased to welcome you to the 2018 meeting of the Systemic Resolution Advisory Committee. I look forward to the discussion on the progress the FDIC and G-SIBs have made in navigating the unique challenges associated with resolving the most complex, globally active financial institutions.

We always should be direct and specific as to how we define our goals and progress. The fundamental goal of resolution planning should be the same for institutions large or small, enable failure in the least disruptive manner.

Resolution planning should work to minimize moral hazard and ensure that market
discipline is real for all institutions. And I think it goes without saying that everybody at this table will agree that bailouts are not right.

Our presentation this morning will highlight the progress we have made in helping the U.S. G-SIBs implement significant structural and operational improvements that have enhanced their resolvability in bankruptcy.

In the afternoon, our presentation will focus on the agencies' work relating to the Orderly Liquidation Authority. We have done a lot of work to increase our operational readiness and look forward to the presentation and the input of the panel.

The final presentation of the day will highlight the progress we have made in building effective cross-border coordination with the international community.

As both a home authority for United States institutions and as a host authority for foreign firms operating in the United States, we
continue to build a strong foundation for cooperation and planning with other resolution authorities around the world, including the Bank of England and the single resolution board.

While we will discuss progress made today, SPOE in bankruptcy remains untested, and there is still work to do to ensure that failure is possible so that market discipline exists, taxpayers are protected and insured depositors have confidence they will receive their cash quickly and orderly under any circumstances, which requires continued effort.

I would also like to take a moment to welcome two new members of the panel first. Former Chairman Sheila Bair, who formidably led the agency through the most recent financial crisis and has been a leader on this issue. And when I first saw Sheila after I assumed my chairmanship I said I have big shoes to fill.

Second, we are joined by The Hon. Shelley Chapman, United States Bankruptcy Judge, Southern District of New York. Judge Chapman is
the presiding judge over the Lehman bankruptcy
and has been a great leader on developments in
bankruptcy planning. We'll just call her the
Lehman Judge.

I look forward to hearing your
thoughts on the progress we have made as well as
your recommendations going forward and to
everyone here today, thank you for taking the
time and welcome to this meeting.

MR. DELFIN: Good morning. Welcome. I
am Ricardo Delfin, the Director of the Office of
Complex Financial Institutions here at the FDIC.
I'm joined by my colleagues, Art Murton, the
former director of OCFI and Deputy Chairman. And
our first panel is Alex Barrage with OCFI, Mike
Morgan in our risk management supervision, David
Wall in our legal division and Nathan Steinwald.

My goal is to sort of tee it up a
little bit. The SRAC was formed, as you may
remember, in 2011 right after the Dodd-Frank Act
was passed in order to assist the FDIC in
thinking through the unique challenges associated
with the resolution of systemically important financial institutions.

Under the Act, Dodd-Frank gave the FDIC two new authorities that are central to this role. The first Section 165(d) is the requirement that large bank holding companies and designated non-banks provide resolution plans or living wills that outline how the firm can fail in an orderly way under the U.S. Bankruptcy Code.

The second tool, the Orderly Liquidation Authority, is a backstop resolution regime run by the FDIC for circumstances when failure in bankruptcy could threaten U.S. financial stability.

Over the years we've met with this group, and it has been enormously helpful in thinking through some of these challenges.

We've talked about the challenges associated with the entry strategies, like SPOE versus MPOE. We've talked about ways to improve the public sections of living wills. We've talked about the challenges associated with cross-border
coordination.

And over the years, we have changed our strategies because of the input that we've received from you also. We very much look forward to that conversation here today.

In terms of structuring our day, we wanted to start where we ended, which was April 2016. The Federal Reserve and the FDIC had recently made a decision with respect to the living wills filed by the eight U.S. G-SIBs.

And there's been a lot done since April 2016 so sort of put your seatbelts on because there's going to be a lot today.

First we'll start there. After lunch we'll go and talk about the readiness efforts that we've taken on our Orderly Liquidation Authority, some of the steps including the recent Treasury Report on orderly liquidation. And finally we'll go to international and the coordination and progress being made overseas.

We really hope that today will be open and conversational so please feel free to jump in
and ask questions along the way. That's how we'd
like to set it all up.

And Art and I will be here throughout
to answer any of the easy questions and the hard
ones. There never seem to be easy questions in
this group unfortunately.

So unless there are any easy ones, we
thought we might start straightaway with Title I.
Just to structure it a little bit, recall that
under the statute, firms file resolution plans
and the FDIC and the Federal Reserve review the
plans.

If the agencies jointly find that the
plans are not credible or would not facilitate
orderly resolution in bankruptcy, the agencies
are required to identify specific issues called
deficiencies that firms need to remediate in
order to avoid sanctions.

If they do not remedy these
deficiencies in a timely way, the agencies can
impose sanctions on the firms, such as heightened
capital and liquidity. And if after two years of
imposing sanctions a firm still hasn't remedied a
deficiency, the agencies can take more dramatic
action, including divestiture.

    In addition, just for lingo, there's
also smaller issues that we call shortcomings.
Shortcomings are issues that don't rise to the
level of deficiency for both agencies, but the
firms need to remedy in their next resolution
plan.

    With that, I'll hand it over to our
first panel.

    MS. BARRAGE: Great. Thank you very
much, Ric. My name is Alexandra Barrage. It's a
pleasure to be here. Welcome to all of you.

    It's been about roughly two and a half
years since we had our SRAC meeting. So what we'd
like to do is kind of bring you all up to speed,
give you a sense of what we've done over the past
two and a half years focusing primarily on the
U.S. G-SIBs but also on the largest foreign
banks, which we'll touch towards the end of our
presentation.
So basically for the U.S. G-SIBs, there have been three key developments. The first development has to do with the letters, the feedback letters, that our agencies provided to the firms back in April of 2016 when this group last met.

In April 2016, the Federal Reserve and the FDIC jointly determined that five of the plans had deficiencies, that is that they were not credible or would not facilitate an orderly resolution in bankruptcy.

This was in many ways a unique turning point in the sense that the letters were not only tailored to each firm but they were made public. So it wasn't just a letter to the firms in many ways, it was a letter to the public.

And so with that in mind the agencies took the time to very specifically describe the issues, the deficiencies and the shortcomings, but also the remediation, the expectations that the agencies had so that the firms could individually address those deficiencies for their
next plan.

MR. HERRING: Could I ask a question here?

MS. BARRAGE: Sure.

MR. HERRING: I've always been a bit curious about whether there might have been two kinds of letters. There was a public one, which I think was a huge advance and showed really quite how serious you were about doing these things very carefully.

But there's always been a tradition in bank supervision of keeping some things really quite secret. I didn't know whether there may be two letters involved.

MR. DELFIN: It was all public.

MR. MURTON: This was it.

MR. DELFIN: And there were redacted words in those letters. The Federal Reserve made them public but that was it. Everything was made public in April 2016, the letters -- well, we'll talk about the framework document and the guidance.
(Simultaneous speaking.)

MR. MURTON: And internally there was a lot of discussion about whether it was wise to be that transparent, and there were some who were very concerned about it.

MS. BARRAGE: I would say one of the things that we had in mind knowing that these letters would be public were things like making sure we didn't use too much jargon.

We didn't rely on so many acronyms that we in the everyday resolution world understand and speak freely but maybe the public wouldn't understand. So we took measures to try and be as transparent about the issues and the remediation as we could.

MR. HERRING: Thank you.

MS. ADMATI: I have another question. So I remember looking at those. I haven't looked at them recently to remember the exact phrasing. But I remember things like assumptions about, you know, say Central Bank support that, you know, they would assume something.
Now how could they -- you know, so then they wouldn't assume. But, I mean, what can they assume? The Fed is there and so, you know, what's the Fed thinking? How can they know?

That's one thing.

And the other is I remember in another part of it you were saying that at least about some company, I don't know who, that they didn't even, you know, contemplate, you know, the kind of structures. I mean, it was pretty heavy kind of criticism.

MR. DELFIN: I think you are thinking back to the 2014 one. So this has been a real progression. When living wills first came out, firms didn't know what a living will would look like. We didn't know what we were reviewing for. And so it has been, you know, a thought process that has iterated over time.

And at each point, we've gotten more specific about what we're looking for and the firms have gotten better at thinking through the unique challenges and obstacles.
So in 2014, the FDIC and the Federal Reserve identified the firms plans had relied on unreasonable assumptions and had been conclusory. And so we asked the firms to provide significant more detail for those plans. And those are the plans that Alex is talking about here today.

MS. ADMATI: Still, I would just add, how much do the firms know about, you know, the counterparties of the rest of the system? Because what would make it credible to the public or to the investors is that there isn't, like, a systemic, you know, panic and all of that that did happen after Lehman.

And so how would sort of bankruptcy and Title I sort of not do that? How can they assure you that that is not happening?

MR. DELFIN: Sure. So that's a lot of what we're going to talk about today. In the evolution of the process, originally we started with scenarios, that is imagine what it looks to put you into failure in terms of pick a scenario. And they would really go through, these are the
runways. What do you want to see? How bad is it?

Thirty day LCR plus XYZ.

And over time we learned that whatever scenario the firm picks, it's most certainly not going to be the real one. And so we actually started taking ourselves out of the scenario business and putting ourselves more in the capabilities business, as could the firm identify how much capital and liquidity it had at each particular material entity?

Could it identify the frictions associated with transferring funds? Could it identify the steps that counterparties might take in those counterparties' own interest that would undermine the strategy? And then, regardless of the scenario, can these pieces work?

So that's been the evolution as we'll see when we get to the guidance. It's really about making sure that you have the tools in place so that whether the scenario comes from here or there that you have a strategy that can work under a reasonable range of circumstances.
So that's certainly the goal.

MS. ADMATI: I'll ask more later.

MR. DELFIN: Sure. Please.

MS. BARRAGE: If we were going to
generally summarize the deficiencies that our
agencies found in April 2016, they ran the gamut,
everything from liquidity, operational issues,
making sure firms understood how to continue
their critical operations, the mapping that the
firms did on those issues. Divestiture options,
we felt a number of firms could do more in this
phase.

And so again, the letters were bespoke
to the firms, clear about the issues and clear
about the expected remediation. So this was
April.

In October, the firms that received
these joint deficiencies were asked to resubmit
plans addressing these very same deficiencies.
And so after October, or I should say leading up
to October, staffs from the Federal Reserve and
the FDIC met with the firms to walk through these
issues to answer their questions, to clarify anything in the letters.

After October, the teams took the plans back. And in December of 2016, after the review was complete, our boards determined that four out of the five firms remediated their deficiencies.

The last firm remediated their deficiencies in April of 2016. So by April of 2016, those deficiencies from the prior year had all been addressed by these five firms.

In 2016, one of the most, you know, prominent important facts I think we'll touch on throughout the presentation today is the fact that six out of the eight U.S. firms have what are called single point of entry resolution strategies. And so we wanted to just plant the seed here because that will come up a number of times in our discussion today.

MR. MORGAN: So good morning. I'm Mike Morgan. Nice to be here. I'm not the lawyer in the group and a little bit new to the process but
happy to be here.

I want to talk to you really briefly about the framework document that Ric mentioned earlier. April 2016 was a big month for the agencies, especially in transparency. So in April 2016, jointly with the Federal Reserve, the agencies, we released a document titled Resolution Plan Assessment Framework in Firm Determination.

This came out along with the determination letters that Alex was just mentioning. It's public and it's on the websites. I'm just going to quickly go through some of the elements of that framework document.

So the document covered the goals and objectives of the resolution that kind of Ric went over earlier but somewhat in layman's terms so that it could be understood, a history and a background of resolution and resolution planning.

It recognized the progress by the firms up to that point of April 2016. And it explained in a little bit of detail the review
process of the independent decisions made by both agencies but how the agencies were working together in the review process of the plants.

It took, in my opinion, two very important steps in transparency as well. It provided some more specificity into what the agencies were looking at for the 2015 plans in the areas of capital liquidity, governance mechanisms and operational capacity and some other areas.

And a lot of those, of course, were carried into the guidance that was also published and we're going to speak about in just a moment.

And it also explained, you know, what we were talking about in the letters when we were talking about deficiencies which is, of course, the legal term there, the statutory term, but also shortcomings. And Ric explained those earlier in his opening remarks.

So just very quickly on the framework document, I think we could probably move into what Alex mentioned earlier, which is the single
point of entry concept.

MR. DELFIN: Before we switch to SPOE, just on the framework document, we'll talk a lot today about there's the substance. But there's also the process. And the framework document really teed up a turning point in the process of plan review.

Do you remember early years plans would come and firms would feel like -- and the world would feel like black box. What does this mean? How does it look? There wasn't a lot of public transparency associated with our findings. There wasn't public transparency about the plans themselves. And the process within the agencies was, let's say, disjointed.

FDIC would get a plan. We would review it. The Fed would get a plan. They would review it. We would find things. They would find things. Then we would talk to each other, duke it out in regulatory parlance and it would take a long time to get feedback.

And sometimes the feedback differed.
We found things. They found different things. And there was confusion about what is it the regulators are looking for?

So this framework document is really a pivot point where our process really started to become joint from the beginning. So after this framework document came out, after we sent the firms letters, we started meeting with the firms jointly with the Fed every time.

We started review teams that were joint FDIC Fed review teams. We started training our staff in joint Fed FDIC trainings. We started getting assessment memos from our teams that were joint.

And it all started with this framework document. It really started setting the stage for a joint review process. It really helped speed it along. Now our feedback is much faster than it was in the early years, largely because the process has evolved. And we'll get to that later, but this framework document really helped set the stage.
MS. BARRAGE: Great. And thanks. And the framework also summarized for the public what the letter said. So that was another important component.

So six of the firms have put together these SPOE plans. And in thinking about the challenges to resolution, both the firms and the agencies had to grapple with this strategy and think about what the specific obstacles were for resolution generally, both for SPOE and for multiple point of entry.

The slide that's here up on the screen is a very simplified schematic of SPOE in bankruptcy. So for those of you who may be unfamiliar with it, we'll just talk about it at a very high level as important context for the remaining discussion.

So SPOE is designed to have the parent company recapitalize and provide resources to its material entity subsidiaries or its operating companies prior to the parent company entering bankruptcy, imagining in this stress scenario.
So as you'll see on the diagram there, the operating companies at the bottom are recapitalized using the firm's total loss absorbing capacity, or what we call TLAC.

The OpCos, or the material entities, are transferred to a new debt free holding company. That's represented by that green box that says NewCo or NewHoldCo. And this NewCo is owned by a trust for the benefit of the creditors of the old holding company, which in SPOE would be the entity that's in bankruptcy.

Okay. So at the operating subsidiary level, internal TLAC is held by the parent or by the IHC in some cases. This internal TLAC is put into place in business as usual today. So these firms have pre-positioned resources at their material entities today.

Before bankruptcy in this scenario, the internal TLAC gets contributed to the operating subsidiaries. That internal TLAC absorbs the losses of the operating subsidiaries and satisfies, or it's designed to satisfy, the
capital needs of those operating subsidiaries or
material entities in resolution parlance.

At the holding company level, external
TLAC, which my colleague David Wall will touch on
a little bit later, external TLAC basically
consists of external unsecured debt at the
holding company level. And the debt and equity
are held by third-parties.

So this debt is issued at the holding
compny level. This debt is written off in
bankruptcy. And those holders understand what
SPOE is because it's all disclosed as part of
their external TLAC instruments.

And so external TLAC is designed to
absorb the entire firm's losses, which get
absorbed by the holding company prior to its
bankruptcy.

MS. BAIR: You say there are internal
TLAC arrangements now. Is that someplace? Because
we haven't done a rulemaking in the U.S. on
internal TLAC, is that right?

MR. DELFIN: That's correct.
MS. BAIR: This is all done through the living will process?

MR. DELFIN: Yes, so --

MS. BAIR: Are these legally enforceable?

MR. DELFIN: Is that enforceable? Sure.

So under the living will process we require that firms -- we'll get to balance and flexibility. But firms need to solve the conversion problem. How do you ensure that your material entities have the capital they need in order to continue functioning so you don't get ring fencing and destroy the world.

And so what we did in our Title I guidance, which we'll get to shortly, is we asked the firms to think about the key challenges associated with that. And they can address those challenges in a couple ways.

They can pre-position. They could establish an intermediate holding company that holds it. Or they can have contractually binding mechanisms to downstream those funds in a timely
There are key obstacles associated with each of those. Pre-positioning has the benefit of being there, certain. But it also reduces some flexibility because it's very hard once it's there to ever get it back.

And if the loss occurs at a different material entity and you have a surplus in another, the likelihood of whichever jurisdiction letting you move it when you're in crisis seems unlikely. So you get the benefit of pre-positioning, but you get the cost in terms of flexibility.

You can have an intermediate holding company. That's positioned. It can move it as needed. That has a benefit. But there are costs associated with creating an intermediate holding company.

You could also consider a CBM that would downstream the money when necessary to where it's needed. There were legal obstacles associated with CBMs.
Well, first there were legal obstacles of just promising to --

MR. KOHN: What's a CBM?

MR. DELFIN: I'm sorry. Contractually binding mechanism.

MR. KOHN: Okay.

MR. DELFIN: So in the early --

MR. KOHN: Those guys do that all the time.

MR. DELFIN: Sorry.

MS. BARRAGE: We try not to.

MR. DELFIN: I get in such a -- I get in my game. But in the early days of single point of entry, especially in bankruptcy, there was the promise, we'll downstream it before we fail. So, well, there are some obstacles associated with that promise.

One is how do you know when before is?

We'll get to that. Another is how are you going to not get sued and lose? That is normally if you're about to file bankruptcy and you transfer a great deal of money from your holding company,
you get sued for, say, fraudulent conveyance or preference.

As we get through the day, you will find that if you sign a contract in advance, right now, for example, when you are solvent, then that contract is perfected now. And so you don't have a fraudulent conveyance or preference claim at the time.

And so through these three different choices, and we allowed the firms to make their own choices as to which they do, it helps mitigate the risks associated with achieving a conversion of the internal TLAC.

But you're right that we don't have right now a standard that says you have to put X at this material entity or not. The Title I process is only making sure you overcome the obstacles. The Fed is looking at whether or not to do an internal TLAC rule.

MS. BAIR: Yes. Well, they've not done source of strength rules either I don't think. But, you know, I'm just, you know.
MS. ADMATI: Just looking at you.

MS. BAIR: The bankruptcy judge who is going to have jurisdiction who's going to have jurisdiction over the HoldCo is going to have an obligation to protect creditors of the holding company.

And so there are going to be issues about this. And so I would just want to make sure you've got this -- I don't know that you got this locked in. I don't what actually happened in bankruptcy under bankruptcy laws.

MR. DELFIN: Right.

MS. BAIR: So I just think this is something that -- you know, where some belt and suspenders of the rulemaking might be.

MR. COHEN: Absolutely. So for what it is worth, I mean, an awful lot of brain cells have been spent trying to assure this is a legally binding commitment.

I think there is another facet of what the agencies have done, which is very helpful.

And that is to make the holding company a so-
called clean holding company so you would have
the most unsympathetic possible plaintiffs if you
ever get into litigation.

MS. BAIR: Well, luckily we have
bankruptcy judge on our panel.

MS. ADMATI: Who seems to be chuckling.

MS. CHAPMAN: So I like to stay within
the confines of what I can and cannot do.

MR. COHEN: Well, if she's not worried,
I know we're not.

MS. BAIR: Yes, but on which side is
she now working?

MS. CHAPMAN: Well, just to chime in,
I think I was in the room when we -- it was prior
to 2016 when we spent probably a couple of hours
when we were trying to solve for this very issue.
Because the minute you talk about this type of
transfer, fraudulent conveyance is exactly what
comes to mind. So a lot of time was spent around
this problem, also bearing in mind the pre-
positioning issue that Ric was addressing.

So it was definitely solving some
simultaneous equations. But I think there's a high degree of confidence in the fact that what we've come up with, you know, short of there being legislation at the Chapter 14 level would be effective. But nothing I say indicates how I may rule if ever called upon which I so wish I hope I won't.

MS. BARRAGE: Okay. So SPOE in bankruptcy, in a nutshell, these are bail-in plans, right? These are firms solving these questions using their own resources in failure. And so --

MR. DELFIN: And just for any reporters, they're bail-in good, bailout, bad.

MS. CHAPMAN: Yes.

MR. DELFIN: Bail-in means the market is pricing in the cost of failure, which is much better than taxpayers ever having to be on the hook.

MS. BARRAGE: Right. Any questions about SPOE?

MS. ADMATI: Well, I mean, you didn't
talk about one side of the grain, which is those
guarantees. And that's where for the qualified
assets and all the repos and derivatives and all
of that, I mean, that could be a lot of stuff
because there's a lot of it.

MR. DELFIN: Right.

MS. ADMATI: So the stay and all of
that, can you speak to that?

MR. DELFIN: Sure. Okay.

MS. BARRAGE: I think the concern
you're touching on is related to the risk of
early termination of these QFC's?

MS. ADMATI: That's the one.

MS. BARRAGE: Right? And the cross-
default provisions that were built into these
QFCs, which we used the protocol and the QFC stay
rules of our agencies are specifically designed
to address.

I don't know, David, do you want to
touch on that?

MR. WALL: We think that the protocol
and the U.S. banking agency's rules which have
now been put into place and are in the process of being complied with by the firms over the next 18 months really solve both of those problems in terms of avoiding cross-defaults and the early termination of contracts at the company level.

MS. CHAPMAN: I think it's not clear how, right? So if there's a failure of the guarantor, it's not cross-defaulted to the subsidiary that's the counterparty to the QFC as it was in Lehman.

MR. WALL: The QFC counterparties have now agreed to not do their exercise to early termination rights so long as the transfer occurs under certain circumstances that protect them.

MS. ADMATI: But some of the concern would be about, you know, closing out, you know, before, in other words moving the runs, the repo runs, et cetera, to earlier kind of ahead of the stay or any of that.

MR. DELFIN: Right. So a few things that you can -- if you have a daily repo you can always not do the repo, but that's not the same
as a QFC termination.

To the degree the QFC has a cross-default, right, those are the issues we're particularly concerned about here. So there's no doubt that in the pre-failure runway as we call it, that counterparties will be running on the firms. So if we assume anything otherwise, we're wrong.

But the QFC issue, specifically, is if a firm were to fail, then QFCs have termination rights under the Bankruptcy Code. Under Orderly Liquidation Authority, we have stay authority. So we can transfer those QFCs to our new bridge institution and avoid this problem.

Under the FDI Act, we have stay authority. We can transfer QFCs. Under the Bankruptcy Code, there's a challenge.

So the way this obstacle has been mitigated is that large G-SIBs around the world have signed on to use the protocol and agreed that they will stay for failures of each other's.

That's a vast majority of the market
that would stay under the ISDA protocol if those QFCs are put in a financially equivalent position in the new institution.

And so what this would do is it allows them to transfer those QFCs if they're in the same position to a new entity that has capital and resources so they don't need to terminate. If, however, if it terminates, if it fails, then they can terminate.

(Simultaneous speaking.)

MS. ADMATI: Yes. I mean, of course, the incentive is to ameliorate this to somebody else instead of banking system that's not signed so.

MR. DELFIN: I think innovations, we talked about that a few years, but we also need approval of the novating party. It would be unlikely that one would approve the novation to gain the system.

MR. COHEN: Ric, I'm sorry.

MR. DELFIN: Please.

MR. COHEN: I'm going to go back to a
point you made earlier about pre-positioning and
the tension between flexibility and certainty. So
internal TLAC is the cousin. And there's no more,
I think, pronounced debate today than how much
that should be. Now, maybe we can get into that
when we get to the international cooperation, but
I do think that's a subject we really need to.

MR. DELFIN: That is definitely a hot
topic right now in the international community is
the degree to which one should rely on pre-
positioning or other venues for achieving the
strategy.

MS. BARRAGE: So, again, the idea here
is keeping the operating subsidiaries continuing,
preserving their going concern value and the
holding company as the debtor in bankruptcy.

So imagine this is the third key
development from 2016. It's about four years
after the rule, the resolution plan rule. We're
still grappling with so many of the same key
questions. What you see on the slide here is a
picture of the guidance document that we issued
to the U.S. firms in April 2016.

In many ways, it's driven at these big questions. And getting firms to address the problems, or I should say the obstacles, thinking through ways firms can do that and very clearly, we think, or maybe not so clearly, setting out the supervisory expectations around their next plan.

And so Ric is going to talk a little bit about sort of the genesis of this important document, including those key questions, and then I'll explain a little bit about how the guidance addresses those specific questions.

MR. DELFIN: This is where it really gets good. You know, what we've talked about until now has been sort of finishing up the 2015 plan review.

The firm has filed in July 2015. They found deficiencies. They had to remedy those deficiencies. They did that in October or March. The framework document described the process, how it worked.
This document is sort of a watershed in terms of being transparent and clear about what the agency's expectations were for the July 2017 plan.

The agencies noted there was still substantial work to be done, and they wanted to be very specific about what it is they were looking for.

As Alex alluded to, six of the eight firms at that time had been single point of entry. Now eight of the eight firms are single point of entry strategy.

Now this guidance worked either way. But I'm going to talk in SPOE terms just because that's now the strategy for all of the U.S. domestics.

So if we're in the world where you have a holding company. And as, Rodgin pointed out, now a clean holding company, failing. You would expect the firm would be suffering massive runs in the pre-failure period.

The plan is to downstream capital and
liquidity to material entity subsidiaries so that they do not fail. If our core goal here is orderly resolution in bankruptcy, that is bankruptcy without systemic risk, that's our test.

Where is the systemic risk? And the systemic risk at a firm with a HoldCo is at the material entities. They're engaging in the activities. They are the ones that are offering critical services to the markets. They are the ones that would dump assets on the markets and run the risk of systemic risk.

So the core challenge is making sure those material entities do not fail. So how do you do that?

So step one, capital. Is there enough loss absorbing capacity at those material entities at that time to ensure that they can be recapitalized so that foreign jurisdictions don't need to shut them down or they don't need to go into insolvency? So capital is dealing with that challenge.
Liquidity. Liquidity has always been the seminal challenge in bankruptcy. And in order for a firm to fail in bankruptcy, it needs to solve its own liquidity problems.

And so the liquidity section is ensuring that the firm had the capabilities to identify the liquidity available at each material entity and to understand their needs so that the third question, so that they can take action when required.

So governance mechanisms, a firm will say, well, we're going to take the following 10 steps before we fail to make sure we do it right. Well, we would logically ask, well, how will you ensure that you will take those 10 steps looking forward through time?

So the firm has established triggers. Triggers for escalating to their board. Triggers for downstreaming. Triggers for taking key actions so they can achieve the two above in time. So that's GovMec.

Then we get to all the operational
pieces. How do you know that your collateral is
where it's supposed to be? How do you make sure
that you have the systems in place and the
services in place so that even if someone ring
fences or gets in the way, you can still achieve
your strategy.

And then we get to the structural
issues. How are you structured to achieve this
goal? Have you gotten clean funding lines? Have
you organized yourself in a resolution resilient
way?

And finally is the seminal challenge
of derivatives. How do you make sure that a firm
can wind down a derivatives book in a bankruptcy
situation, not just the transfer of the QFCs, but
what do you do after that?

You could assume that SPOE works and
that isn't a problem. And we wanted to make sure
that we had contingencies in place. And so that's
what the derivative section is about.

And then finally, you know, we really
wanted to go and make sure that these public
sections were improved and strengthened. And so we asked the firms to do a better job of describing for the public how this would work because this challenge is, in many respects, a market challenge.

If the market believes these firms will be bailed out, then they get funding advantages and it makes it harder for the firm to fail. And so the market needs to understand how these strategies work. The market needs to help us identify obstacles so that the market believes this will work which actually helps it work.

So we really wanted to make sure there was a key public transparency component to it.

MR. KOHN: So maybe you’re going to cover those pieces, so two questions. One is the trigger. What’s the enforceability? Can the FDIC or the Fed force them to do what they say they are going to do when the triggers are triggered?

MR. DELFIN: Sure.

MR. KOHN: And then the second point was are you guys going to say more about
liquidity and how that's --

MR. DELFIN: Of course, yes.

MR. KOHN: Yes, okay.

MR. DELFIN: So enforceability, we have two different pieces here. One is the -- we have the Title 1 enforceability. If a firm sets a trigger that we find is based on an unreasonable assumption or expectation, then we can say that the plan has a deficiency and that's an enforceable act in Title I pilots.

MR. KOHN: Right.

MR. DELFIN: We also supervise these firms. And so to the degree a firm has a trigger, and we will certainly be in the firm if a firm were in runway, we would be looking very closely to these triggers as supervisors.

MR. KOHN: And if they didn't do what they said they were going to do, could you then fail the firm right there or send to -- I mean, what's your stick in the closet?

MR. DELFIN: So if a firm -- well, let's see, two pieces. One is the core act that
needs to take place is the downstreaming of resources.

MR. KOHN: Right.

MR. DELFIN: And let's say the filing of bankruptcy.

MR. KOHN: Right.

MR. DELFIN: Those are the key things.

If a firm is relying on, say, a contractually binding mechanism in order to downstream, there is a contract between a parent and a material entity sub that is enforceable by the material entity if you have a binding contract. If the resources are in an IHD, it's already separate from the HoldCo. If it's pre-positioned, you don't have an issue.

MR. KOHN: So you talked about that for capital, but I wondered about liquidity.

MR. DELFIN: Liquidity, too, same thing.

MR. KOHN: The same thing, they're binding.

MR. DELFIN: Same thing.
MR. REED: CBM so --

MR. DELFIN: If the firm relies on those. If a firm does not execute its own trigger at the time, I would imagine our supervisory tools and actions would be the key ones we would employ. Luckily, we haven't been there yet to test that assumption, but that's the one which I was thinking.

MR. REED: Does the intermediate holding company have a board?

MR. DELFIN: Yes.

MR. REED: And those, are they external or are they internal?

MR. DELFIN: So I think it varies. But there are questions about making sure that there aren't conflicts of interest of overlapping boards when thinking about the downstreaming because you could have.

MR. REED: So if you want to transfer substantial assets and for some reason the board says no, you've got a problem.

MR. DELFIN: So we think the incentives
should be for yes.

MR. REED: Of course.

MR. DELFIN: So the CBM helps -- well, pre-positioning helps what's already there. CBM helps legally make it there. But the incentives should be for making it there because the value of this firm is dramatically improved by the continuity of its material entity and subsidiaries.

That is these things working is where the value is. If you start having failures in material entity subs, you're going to destroy value. So there should be aligned interests of the board in ensuring the strategy works. But it's fair to say what if that doesn't happen and that could be a challenge.

MR. REED: And you look at the compensation of those boards?

MR. DELFIN: We do.

MS. BARRAGE: In fact, our guidance suggests interlocking boards of directors. We've asked firms to address this.
MR. STERN: So the operating entity will have the information it needs to pull the trigger?

MR. DELFIN: Well, the pulling of the trigger can -- sometimes the trigger is automatic. Sometimes the trigger is by the HoldCo or by the material entity executing. Or it's just there. And then the conversion of the TLAC would be based on whatever the requirements are at the time.

So the pulling or pushing of triggers is different based on the choices you make about the allocation of resources.

MR. STERN: Are the triggers binary? Did you build in any flexibility in terms of -- we can go through every scenario known to mankind and the next failure will have nothing to do with any of them.

MR. DELFIN: There's flexibility.

MR. STERN: And so you built in --

MR. DELFIN: We don't build the triggers. The firms build the triggers.
(Simultaneous speaking.)

MR. BODSON: I think there is a question of as the supervisor, do you look at them as black and white or do you look at them as it's a series of decisions that may be made. It could go either way depending on the circumstances internally and externally.

MR. DELFIN: And so we don't want to build the triggers or choose the actions the firms take, that is we want to make sure they overcome an obstacle.

So one obstacle is are the resources where they need to be at the right time? And another obstacle is can you be sued? Can somebody get in the way of stopping it? We review the steps the firms took to mitigate those obstacles.

The firms obviously care about flexibility and ensuring that they have choices in that. And we don't want to get in the way of such flexibility.

MR. BODSON: How did you deal with conflict between the two boards? If you have, you
know, an intermediate board and a parent board, it could get a situation where obviously there could be conflict.

MS. BARRAGE: So the firms were asked to address these interlocking board of director real world issues. And they've developed playbooks. Many of them have a set of independent directors, you know, there in the event there is an interlocking issue that would present a conflict.

We also ask the firms to talk specifically about fiduciary duties of their directors, both at the holding company level and at the operating subsidiary level.

So again here we put the obstacle before the firms. And it's really up to the firms based on their composition, based on their entities how they want to address those issues. But we review those.

MS. ADMATI: Can I say something? I think that what's working here behind Don's question and some of the other questions is the
fact that the entire firm, within the entire firm and the subsidiaries, there is sort of, in the entire discussion, this issue of systemic risk.

Systemic risk creates a potential conflict about losses between, you know, the firm and its subsidiaries and kind of the rest of society in the sense of spreading the losses on the public because we're afraid to let them fade.

So that's kind of in the background of all of this. So a fiduciary of the board is obviously to try to get somebody else to bear the risk. And so the question is how do you fight that in actuality? In other words, that's why I think enforcement issues are sort of here, like what would you actually do to make them do that?

I remember a story about Continental Illinois and apparently the provoker was the chair of the Fed. And they wanted Continental Illinois to recapitalize under prompt corrective action, and they just didn't.

And then they ended up -- that was well before. But I'm just saying that, you know,
they were afraid to let Continental Illinois fail and ended up -- the FDIC ended up absorbing a lot of debt. People might remember that. I wasn't interested in these issues. So it's a story I heard later.

Just one quick other thing about liquidity. There's some of the funding liquidity, which is, you know, the funding running away. And then there is the market liquidity, which is sort of resources, you know, that you can employ. Neither is saying something about markets so they won't freeze. So things that were liquid became illiquid quickly.

So how do you, when the institution says, you know, I'm assuming that I will have these resources of that, you know, are they in a position to promise what they are promising? Or, you know, in other words, aren't there still assumptions is what I'm saying.

MR. DELFIN: So if the question is, are there still assumptions? Yes, many. We don't know the firm. We don't know the scenario. We don't
know where the risk is.

And so what we try to do is, again,

build out capabilities for dealing with multiple
scenario, ranges of scenarios, but, yes, there
are assumptions.

The firm has to put itself in a
failure state. It has to assume a pretty
Draconian state of the firm and of the world.
Whether that is the Draconian state that occurs
at the time, I don't know.

There are pretty significant
limitations on their ability to access funds. And
so in many respects we think of them as having to
self-fund their resolution in bankruptcy. It's a
challenge.

MR. COHEN: You know, you can
understand the concern that is being expressed.
There's this very elaborate mechanism but it
depends ultimately on individuals. I do think
what has been done is sort of belt, suspenders
and maybe something more because there are the
elaborate mechanisms.
There are also, which we haven't mentioned, liquidated damages if you fail to live up to your contractual obligation, and they are very severe damages in the contracts.

But above and beyond everything, I think it's what Ric said more than -- it is almost impossible to conceive of a scenario where you wouldn't downstream. Because if the subsidiaries fail, there is no value left in the holding company. It's the only possibility of the debtholders recovering anything is for those subsidiaries to survive.

So there are built-in, I think, a number of, again, support mechanisms to assure this works.

MR. HERRING: Far be it for me to ever question Rodgin about the law, but there have been instances of failures of subsidiaries from firms that have withdrawn. You can always argue that it was something country-specific. But it has nothing to do with the health of your firm.

And I can remember a case when an
insurance subsidiary of a European firm was permitted to fail. They wanted nothing to do with it. They wanted to back out. Yet the parent was in fine shape.

So I think we have to be a little bit careful about assuming that the whole life of the holding company depends on all of the material entities. I think there are cases where you can sort of walk away.

MR. DELFIN: Yes, on one subsidiary.

MR. REED: I think the word is off because I do think you will be attempted to say there is a subsidiary that you would not care about. You know, sort of --

MR. HERRING: Now, I hope that's behind the material entity definition because ideally the material entities all ought to be contingent and could not walk away from. But I'm a little bit unclear about exactly what the definition of what material entity is.

MR. FISHER: If you could just help me with language as you go forward because I feel
we've got two different sets of issues you've put on the table and many more.

But there's a vertical issue that we're sort of legislating as best we can to make the holding company a source of strength. There's a whole set of issues you're describing. We're trying to make sure that the day comes when we've got confidence we're not running some ridiculous maturity smashed between the HoldCo and the entities, falling short up here and lending long.

And I see all the things that living wills and you're doing about that. But you actually started to talk about the horizontal issues and subsidiaries and whether we have knowledge about whether there's too much liquidity and maturity, volatility mismatch there.

And that's where I think we're dragged into the market expectations problem. And your list you ran through up on the slide there was all about, I'm thinking, it was a horizontal issue within the operating subsidiary. Then how
do we know?

And actually the conversation we all are much more comfortable going back and talking about the vertical issues where we're legislating all of the clever -- we want to make sure the holding company is not a source of weakness but a source of strength. And that I see how the living will process helps us articulate.

The complexity you got into when you started touching on the outgoing horizontal issues, that was kind of a black box to me. I mean, we can go through all the lists of derivative contracts and all. But I still want to figure out how do we know -- there's a problem of knowledge that we've got our hands around the scale of maturity mismatch or volatility mismatch or liquidity mismatch taking place at the operating entity.

And the living will process is a pretty imperfect way to get at that it strikes me because we're imagining this future state of knowledge.
The vertical ones I can see we get through to the living will. But I'm still struggling with how we do it horizontally. I don't know if that's helpful or just distracting.

MR. DELFIN: No, it's helpful. It is an imperfect way of getting at the problem. It is not the only tool. We do have supervisory tools that take place and focus significantly on a firm's liquidity and liquidity under stress and those happen in parallel.

What we're trying to get at here is, you know, what's the liquidity positioning for each material entity under stress? What are the frictions associated with moving that liquidity and does the firm have the capabilities of recognizing when there's a liquidity need at a material entity so that it can get the resources there in time to execute its strategy?

We can't, through this process -- I mean, we could try, but we would probably fail just from too much information, go with daily and every conceivable daily liquidity flow for each
of these entities.

    So we need to make sure the firm can understand the needs and availability of resources at each material entity and that we have the information to -- and they have the information to make the decisions to execute the strategy.

    That's kind of where we are, I think. But you're right that we don't have maximum information about all of it all the time. I think we're getting better but.

    MS. BAIR: It's a really good question because that's what we saw during the crisis, right? So the banks had stable liquidity. So we were under a lot of pressure to prove we were moving up. So Nancy asked that centrally insured bank -- you know, deposits were increasing dramatically. Our exposure was increasing dramatically.

    I don't think you want a repeat of that again. So are you confident that this living will process is going to -- the securities
affiliates, you know, the non-making affiliates, will they still have liquidity or to what extent are these firms still going to rely on moving stuff into that nice safe FDIC insured thing that's accumulating deposits in a crisis but increasing the exposure here as well.

MR. DELFIN: I think through the living will process, there's been substantial progress on understanding the liquidity position of each of those material entity subsidiaries and addressing the liquidity need, if they need to, through this process.

The specific capabilities of each material entity, that's the place where this needs to go.

MS. BAIR: Sure.

MR. DELFIN: That is right now there's a structure. Let's say it works in theory or, knock on wood, that is -- I think in terms of what are the things that can go wrong.

MS. BAIR: Right.

MR. DELFIN: So we provide a list of
here's everything we think of that can go wrong. And from today maybe we'll add a few more things to that list, and then how do we mitigate that risk?

And so I think what we'll see is we've done a lot, and the firm has done a lot to address each of those issues. So you have a nice structure.

MS. BAIR: Right.

MR. DELFIN: But you need to make sure that the capabilities, that the models and the assumptions underlying the models, are tested and validated over time so that if that date comes you can rely on it.

MS. BAIR: Right.

MR. DELFIN: Because we don't know the scenarios now, but you need to be able to have models that can take in the world as it exists on that day to work.

MS. ADMATI: I think Sheila was asking specifically whether the FDIC having two hats. You're systemically resolving a holding company,
but you also have a subsidiary that's an insured bank. And so the deposit insurance fund suddenly might get a lot on its head.

MS. BAIR: Well, I think the -- well, so in this scenario we're not -- this is not Title I. So we're just, you know -- and I think you also need to worry whether you've got an out. And it's your bank that's failing too --

MR. DELFIN: Of course.

MS. BAIR: -- and how that works. And I wanted to ask you about separability in that regard. But, yes, I mean, I think what I'm hearing you saying is that there's a lot of rigor going into breach of material entity, not just at the HoldCo level, but at the material entity level. How are they going to fund themselves in a distressed situation without relying on insured bank? I guess that's my question. Is that what you're doing?

MR. DELFIN: Right.

MR. MURTON: That's what this is all about.
MS. BARRAGE: That is the crux of this.

MS. BAIR: Yes. Okay.

(Simultaneous speaking.)

MR. MURTON: We're not allowed to rely on the kind of measures that you described in order to solve their broker dealer problem.

MS. BAIR: So I just had another more of a question. So one of the criticisms with SPOEs, whether it's bankruptcy or Title II, is that you're just kind of perpetuating, a big, right, a big inefficient complex on a non-transparent entity. And so you're just going take all your TLAC, convert it to equity, re-capitalize and in turn hold the company and prop it up and back it goes.

So, I don't know if that's a good -- you know, I'd certainly take that over the disruption was had after Lehman. But how do you think about separability? And it seems to me from the standpoint of maximizing value, too, these large entities, especially one that's failed, might be well worth a lot more in individual
pieces than just propping it up and, you know, keeping it the way it was with the new capital base through TLAC.

So how do you think about separability and does that factor into your thinking?

MR. DELFIN: Yes, yes. So a couple things. The first is are you supporting big or not?

MS. BAIR: Right.

MR. DELFIN: So nothing supports big more than what we did in '08 and '09, right?

MS. BAIR: Right. That's for sure.

MR. DELFIN: Just protect the creditors so that they have an incentive to lend money to these firms, and they get bigger.

MS. BAIR: Right.

MR. DELFIN: So through the TLAC, the firms have to actually go to the market, and market actors have to lend to these firms based on the probability of default and the potential losses.

MS. BAIR: Right.
MR. DELFIN: So now there's a market cost associated there that didn't exist before. So that's a cost for being big that didn't exist along with all the other regulatory costs like the living will process and whatnot. There's that part of it.

Now our test in Title I is orderly resolution in bankruptcy --

MS. BAIR: Right.

MR. DELFIN: -- without systemic risk. If a firm can achieve that, well, that's great, right? Taxpayers didn't step in. Firm failed. The creditors took losses. We move on. Public interest has been served. That would be a wonderful step forward.

We do, however, think about separability because SPOE is untested.

MS. BAIR: Mm-hmm.

MR. DELFIN: And we want to make sure that firms have what we call objects of sale. That we have separability actions available to us and to them.
MS. BAIR: Right.

MR. DELFIN: First to avoid failure, which would be our ultimate goal. If a firm has an object of sale that is pre-identified, we require that they have data rooms that actually house the key information so that they can separate these things more quickly.

If a firm can do that in recovery and not fail, great. If the firm then fails in SPOE, then there are choices available for the board or for the FDIC if we were in a Title II world to sell off those objects and wind down the firm.

So this is where, and we'll get to later, where Title I and Title II kind of come together. But we want to make sure these firms are separable and have separability options because they improve resilience and avoidance of failure and give us choices in resolution if we need them. Does that help?

MS. BAIR: It helps, but just what's your comfort level of their ability --

MR. DELFIN: Comfort level --
MS. BAIR: -- you know, how stable are
the major business units of these big --

MR. DELFIN: There's been a lot of
progress made on objects of sale and
separability. In our December findings, we noted
the work that the firms have done.

CHAIRMAN McWILLIAMS: You know, I
thought this was a great job until Sheila started
asking questions.

(Simultaneous speaking.)

MR. COHEN: I think Sheila is really
asking two important questions. One, if you wind
up in this situation, can the entity survive
after the recap? And the second is should it?
Should this big institution still survive?

And I do think on separability all of
the effort has appropriately been on could the
company separate itself out? But I don't think
much work has been done on whether there would be
any buyers for the pieces. And I do think that's
something which needs a lot of thought because
you've heard a lot of buyers out of 2008 saying
never again.

MR. DELFIN: And there is a debate that goes on about whether it's worth more in pieces or not. There's definitely a school of thought that says separating it would destroy value, and there's a school of thought that separating it would unlock value.

MR. COHEN: And isn't the basic point you want the flexibility to be able to make the decision at that point in time.

MS. CHAPMAN: But the proof is in the pudding. And I'll touch on this in my remarks later. The recoveries at the various Lehman subsidiaries, the recoveries for the unsecured creditors, there is a variance.

There were some subsidiaries, I think, we went over the counter, affectionately known as latzy comes to mind, where the recoveries exceed 100 percent. So it was all a question of the degradation of value that occurred after the filing and after determination of QFCs.

So a lot of what you've done to
address not only the vertical problem but the
horizontal problem and in particular around the
issue of flexibility versus pre-positioning, I
think, helps ensure that there would be
maximization of value after a filing.

I think one question, which I'm
certainly not qualified to answer, is the value.
And the buyers are going to depend on the extent
to which there is stress more generally in the
markets versus whether the failure is for reasons
maybe we can't conjure, mostly focused on one
firm.

Certainly if there's general stress,
you know, you're not going to have people buying.
You know, what you're seeking to avoid is the
experience of, you know, a Barclay's sale, you
know, four days after the filing when people at
the time thought, you know, hold on. We shouldn't
do that. And I think not many people are in a
position to really second guess that at this
point.

So I don't know if that's responsive,
but that's kind of from a bankruptcy perspective.
And most importantly is the understanding of
everything that's in the closets and the attics
of the firms in terms of their operating systems,
where they're booking their risk, how they're
booking their risk. Who controls their software,
their intellectual property?

And my understanding of the work
that's been done, there's been a lot of cleaning
up in that regard that would be value accretive
in the event of a failure, and you needed to
separate firms and ready them for the subsidiary
entities and ready them for sale.

MR. BODSON: Can I ask you a question?
When I look at this, and you see the term
maximization of value, I took a different
approach. I thought you were trying to minimize
disruption.

I mean, to me, it's how you keep the
operating companies alive long enough that if you
want to wind them down, you wind them. If you
want to sell them, you sell them. You figure that
out in due course. But the point is to make sure that the system is not disrupted by a Lehman type collapse.

So whether or not there's maximization of value, to me that's a secondary issue. It's really how do you save the system, not how you save the firm or the shareholder --

MS. BAIR: So the FDIC has got a public policy mandate, but the bankruptcy court doesn't.

MS. CHAPMAN: That's the chance you take.

MS. BAIR: That's exactly the chance.

MR. DELFIN: So I think what the strategy is supposed to do is the strategy is supposed to make sure that there isn't systemic disruption. You know, if the strategy works there isn't systemic disruption. Now in the bankruptcy court at that point, maximization of value is the goal.

MR. BODSON: But it's a two step and the first step --

MR. DELFIN: Well, the first step is
getting from failure on Friday to a --

MR. BODSON: Operating --

MR. DELFIN: -- stable trust on Monday

so that market destruction has been avoided and

now the bankruptcy court can do its process, but

with a stable entity in trust that doesn't --

MR. BODSON: Okay.

MR. DELFIN: -- disrupt the markets.

But you're right.

MR. BODSON: I didn't want to put the

horse before the cart.

MR. DELFIN: No, yes.

MS. BARRAGE: Understood.

MR. DELFIN: So financial stability

should have been protected first and then you get

to the --

MS. BARRAGE: Claims.

MR. DELFIN: Yes, claims process.

MR. STEINWALD: In our calculations

that we ask the firms to make, we conclude a

consideration of the stabilization period. So

it's not just a point of time calculation, but
it's an estimate of what it's going to need to
take you through a certain period in which you're
going to stabilize the operations.

MS. BARRAGE: So if we could go back
into our 2016 time capsule here because there's
quite a bit of stuff.

MS. ADMATI: Well, we're still in 2018,
right?

MS. BARRAGE: We promise. We'll bring
you to today. A lot of topics in this guidance
and a lot of questions from the firms. So we put
out what we call FAQs, frequently asked
questions, on the general level for all the
firms.

In some cases, there were firm
specific questions that they had, and they were
responded to by the agencies. And so remember
this is guidance that's really directed at their
2017 submissions.

And so I want to talk a little bit
more about the guidance itself and some of the
questions that have come up in our questions
today. How did we deal with or how does the guidance deal with the risk of multiple competing insolvencies, right?

This is an obstacle that's time immemorial. We addressed it in 2013. The Lehman case is a prime living example of this risk. So in many ways SPOE is what the industry and what many of you, as addressing this multiple competing insolvencies problem, again, with the model that only the holding company fails and the operating subsidiaries, which, of course, are global, are sustained.

One of the biggest questions that we've been grappling with, but I think we've made a lot of progress on, is how could you resolve a systemically important financial institution in bankruptcy? And as a result of a lot of engagement with bankruptcy experts, the guidance actually discusses some of the legal obstacles in detail.

So preference in fraudulent transfer risk or what bankruptcy practitioners understand
as avoidance action risk. How do you address that?

We saw the development of contractually binding mechanisms, secured support agreements where there's definitely a source of strength kind of theme built into those. Guaranteed obligations to save the material entities and stress and all of the mechanics around that.

Bankruptcy playbooks were provided. So bankruptcy playbooks describing and incorporating things like draft first day motions.

So for any one of these U.S. G-SIBs if there was ever a moment where we had material stress and they would have to fail, the plans that they provided to us actually provide draft documents for what they would file. I mean, down to the caption. I mean, it's descriptive. It's got some placeholders for things. But that's a huge development from even 2012 in the planning.

So we've got bankruptcy playbooks. We have playbooks for the boards at the material
entity levels. We have firms addressing the real problem, or the real issue of interlocking boards of directors and how would they deal with those issues.

We have the issue that has come up, I guess, a couple times today, on early termination of qualified financial contracts. And this focus on cross-defaults and the issues that we had in Lehman were counterparties because they were safe harbored under the Bankruptcy Code. Were able to terminate their contracts notwithstanding the bankruptcy filing of the holding company in Lehman.

So, again, these are just some examples of how the guidance directly tried to have firms address these obstacles in specific ways but also in ways that gave the firms the ability to address them based on their operations in their risk framework.

MR. KOHN: Can I ask a little --

MS. BARRAGE: Sure.

MR. KOHN: -- about the international
dimensions here. So all these companies are
global companies --

    MS. BARRAGE: Mm-hmm.

    MR. KOHN: -- in one degree or another.

And I understand under Title II the FDIC has been
working with the Bank of England and the European
authorities, et cetera. What happens in
bankruptcy?

    So, I guess, I'm looking at the judge
here. Any understandings between U.S. bankruptcy
judges and people in the UK? Why wouldn't this
just collapse for a global firm in bankruptcy?

    MS. CHAPMAN: I can't promise anything,
but what happened in Lehman was quite
extraordinary, and I think it was unprecedented.
There was outreach and -- coordination is
probably too strong a word. But there was an
attempt to work together in a cooperative
fashion.

    There was a protocol that was
fashioned that clarified whether in essence the
U.S. case would be the lead case, would be the
host case and the UK case, which was the -- you
know, there were cases all over the world.

MR. KOHN: Right.

MS. CHAPMAN: And it was that

coopera...
regulators themselves would play on the first day.

Alex alluded to the first day motions. That's shorthand for on the first day of a bankruptcy the debtor presents motions that we call the first day motions that are designed to ensure that the firm in bankruptcy can continue to operate.

And we've talked a lot about what that would look like, who would appear, who would be heard from. And I think the foreign regulators, their role, have figured into that conversation. I hope that's responsive. I think probably Ric and Alex can do a better job of answering also.

MR. DELFIN: I mean, this should be better than the Lehman world because there's an entire structure built around --

(Simultaneous speaking.)

MR. KOHN: There's not much of a hurdle there.

MS. CHAPMAN: There has also been, I will add, that there's been an explosion of
developments in international insolvency since 2008. There are frequent meetings.

Singapore is trying to position itself as the next place to go for global restructurings.

There's something now called the Judicial Insolvency Network. There's a memorandum of understanding that's been signed between the Seventh District of New York Bankruptcy Court and Singapore and South Korea.

We've hosted -- I've personally hosted judges from six nations, Saudi Arabia, Russia, People's Republic of China, South Korea. So I think since 2008 there's been more of a global conversation around insolvency, and everyone wants to the United States is what I would say.

So I think there are protocols that have actually been implemented in bankruptcy cases in both Delaware and the Southern District of New York. So there are lines of communication, I think, that didn't exist in 2008.

DIRECTOR GRUENBERG: If I could just
make a point. I think there are two core issues relating to the bankruptcy tied to division of authorities. And I'm pretty clear that liquidity and cross-border cooperation are the two core challenges that the bankruptcy process has that Title II is better positioned to address and thus the foundation of the recognition of why you would need a Title II backstop.

And indeed the National Bankruptcy Conference wrote one of the strongest letters in support of Title II in recognition that there are inherent limitations in the bankruptcy process that makes the existence of Title II necessary.

MR. REED: Can I ask a different question? Do you know to what extent the management of these entities are really familiar with these submissions?

MR. DELFIN: Sure. Do you want to talk about the governance process?

MS. BAIR: Good question.

MR. DELFIN: So they actually have a governance process that has to go up through
their board. So the firm's governance process, of course, in submitting a plan is pretty substantial. And the senior-most officials within the firms are well aware of the resolution strategies of the firm.

MR. REED: And so you've interacted with them and supports are --

DIRECTOR GRUENBERG: If I can comment on that. The experience of five of the eight firms that have been jointly failed by the Fed and the FDIC with the prospect of the statutory consequences available are as a result of failure. My perception was, because I was visited by the CEOs of the firms.

MR. REED: They heard, huh?

DIRECTOR GRUENBERG: They definitely had heard.

MR. REED: Because, you know, when you're in these circumstances, it's the management --

DIRECTOR GRUENBERG: Of course.

MR. REED: -- that really has to know
what they're doing and have thought about it. And
if you've hired a bunch of lawyers and
consultants to write you're submission --

MR. DELFIN: It's not real.

MR. REED: -- it's not real. But you're
convinced because that ultimately is what counts.

MR. DELFIN: Right.

MS. BARRAGE: Yes. We meet with these
firms -- I'm sorry.

MR. WALL: For what it's worth it's a
legal matter. The rule does require that the
board of directors review and approve the plan.

MR. REED: But there are reviews and
approvals and reviews and approvals.

(Simultaneous speaking.)

MR. WALL: There are the governance
requirements that we've built into the --

MR. DELFIN: But we have pretty senior
legal engagements.

MS. BARRAGE: We meet with the firms,
yes.

(Simultaneous speaking.)
MS. BARRAGE: And across the board they are conversant in their plans. We meet with the firms directly. We don't meet with their consultants.

MR. REED: Yes. Do you --

MS. BARRAGE: They ask questions of us, of our staffs.

MR. WALL: I should also say that the firms have committed, I think, an extraordinary amount of time and resources into their -- at least most of them into their governance procedures, into their resolution planning processes.

So it's a significant cost centric to them. And so I would -- you know, the management has to pay attention to that if only from a budgetary viewpoint.

MR. BOWSHER: Do you evaluate the quality and the competence of the audit committee chairman and the risk management chairman and the board and some of those people that are really key for the board doing the right thing?
MR. DELFIN: I would just say that, you know, as our public letters point out, the submissions have improved substantially over the last few years with substantial progress on each of these areas. So I think that is a testament that someone is doing the right thing.

CHAIRMAN McWILLIAMS: And also in the supervisory side under the CAMELS rating. The M would be the management. So we would have combined the supervisory expectations with what's happening in resolution planning so to make sure that the board is competent and that the heads of each of the committee and assigned persons are adequately prepared for what may come down.

MR. FISHER: To answer John's question a different way and some advice to the OCFI staff, as a former director of a non-bank CFI, what was once a non-bank. Another issue for the board is to be able to take the plan and hold it against a treasury function to think about liquidity.

And so it's hard. You can read a plan.
And the plan can seem very reasonable and well-constructed and you interrogate all the lawyers and the people who thought hard about it. But what you worry about it is laying it against liquidity in the treasury function of the holding company and all of the subsidiaries.

That requires just making sure that the CFO and the treasury operation line up, as complicated as it will be -- legal entity, operating entity. And it's very hard though.

And that's the nub of it, I think, to John's question, is you can read a plan. The plan looks good and you work hard, but you've got to read the whole thing.

But if you're going to hold it up, you're going to turn to the treasury or the assistant treasurer and talk to that person about it. And that's the conversation -- you know, getting the CEO is one indicator, but you really want to care about the deputy treasurer.

MS. ADMATI: I think what Peter is bringing up is so now what we're going to discuss
now is we're focusing now on, like, eight firms
and we forgot, and if so, we also forgot that,
you know, some of the failures would not have
been designated by now. Lehman would not have
been. AIG would not have been, et cetera.

So now we're talking about very few
firms and fewer by the day that we are talking to
the management and doing all of these things. And
then it will come from somewhere else.

So the question is how -- what happens
to a suddenly systemic company? Are we having
enough SRAC or monitoring of that? And, you know,
when we get to 2019 we were talking about Fed
regulators and others doing more to prevent you
being in this position. We're talking about the
grim situation.

MR. DELFIN: Right. So we're in Title
I land and under Title I, it applies to bank
holding companies designated non-banks. And so,
yes, living will is applied to those firms that
are excepted to the law.

MS. ADMATI: How many submit to living
wills now?

    MR. DELFIN: Well, we work on the
largest U.S. G-SIBs plus the four largest FBOs.
There are a number of other plan filers. That
recently changed. The Crapo legislation change.
The filers of U.S. firms that are smaller bank
holding companies. So I don't know the exact
number now.

    MS. ADMATI: But that's banking hold
companies. That's not insurance company or --
    MR. DELFIN: FSOC makes designation
under the designations.
    MR. HERRING: Yes. And that's where
it's a very different universe than we even
thought we had five years ago.
    CHAIRMAN McWILLIAMS: So I think we
should take a break.
    MR. DELFIN: We are right on time.
    CHAIRMAN McWILLIAMS: And I would just
ask the staff please come back.
    MS. BARRAGE: We're just getting
started.
CHAIRMAN McWILLIAMS: It has been a very engaging endeavor. We'll continue after the break. Let's break for 15 minutes.

MR. DELFIN: Perfect.

CHAIRMAN McWILLIAMS: And then let's reassemble. And I need to ask the security guards to make sure none of these people get on the elevator.

(Whereupon, the above-entitled matter went off the record at 10:18 a.m. and resumed at 10:34 a.m.)

CHAIRMAN McWILLIAMS: All right. So we're going to resume. Marty would like to open up the next session.

DIRECTOR GRUENBERG: Well now before the day gets away from us, I wanted to take the opportunity -- I wanted to thank this Committee.

And to make clear of what an impact you all have had on our process. I just mentioned to Dick Herring, without a doubt our focus on transparency, which I think has been central to trying to establish greater
credibility to the work we've been doing, has
directly resulted in his committee making clear
how important it's been.

And if I may say, Dick in particular
contributed in that regard. I just wish you guys
were not so hesitant and reluctant --

(Laughter.)

DIRECTOR GRUENBERG: It is with this
committee sort of like pulling teeth.

But before the day gets away, I wanted
to, if I may acknowledge two, former members of
this committee.

One, Paul Volcker, who is an original
member of this committee. And if I may say,
really had a formative impact on our strategic
approach to the resolution of systemically
important financial institutions.

And I also wanted to acknowledge Mike
Bradfield. Who you all knew of course, was
general counsel for the Fed for a long time under
Chairman Volcker.

He also served as general counsel at
the FDIC. I believe the only person to have held both of those positions.

I may say one of the really influential banking lawyers of his time. And sadly since this committee last met, Mike passed away.

So I just want to take a moment here to acknowledge both Chairman Volcker and Mike Bradfield's contributions.

CHAIRMAN McWILLIAMS: Thank you Marty.

All right, you may continue.

MR. MORGAN: All right. So, I think I'll pick it up from here. We're going to close out the discussion of the 2016 Guidance.

But not before we introduce you to a couple of acronyms, right? And I'll try to define those as we go through here.

But we want to spend just a couple of moments on liquidity and capital. We've had some discussion about that.

And to explain the concepts. Not getting too deep into the details. Explaining
the concepts of what we're talking about and what
the Guidance is expecting of the firms or the
plans.

Which is in a nutshell, and Rick spoke
to it earlier, you know, you need to estimate how
much capital you need to get into and through
resolution. And, you also need to understand
where it is.

And then you need to have a process
for understanding how much liquidity and capital
you would need after filing. And so that's --
those are the concepts that I'm going to speak
about briefly.

So, here are the acronyms. We have in
liquidity something called RLAP. Resolution
Liquidity Adequacy Position. Right?

And this is what Rick, and it's -- we
have another one in capital as well, RCAP,
Resolution Capital Adequacy Position. Similar
concepts in that -- but I'll talk more
specifically about liquidity.

How much liquidity can the firm --
does the firm need at the material entity level?

Right, so it's measured at the material entity level, to get them into resolution and through resolution.

And so the concept is, taking internal liquidity stress tests that the firms, you know, have designed, at the material entity level that they have designated, through a 30-day stress test. It's an internal scenario.

And measuring those outflows with some assumptions and some constraints. Treat affiliates like a third party.

And don't -- at the end, don't assume that surplus liquidity and one material entity would be easily transferred or transferred to other material entities.

That's RLAP, right. So it's about figuring out about how much you need and the position of those within the material entities. Either in it or close to those material entities, readily available to those.

RLEN, another acronym, Resolution
Liquidity Execution Need. So this is post-bankruptcy.

As the -- we are asking the firms, look at each material entity again. And for each material entity, look at minimum operating liquidity that would be needed in a stress situation.

That would be your inter-day liquidity, your operating expenses, whatever for that company, plus a peek funding need as the turmoil or the bankruptcy is going on. Especially in the early days.

How much liquidity do you need to get to a stabilization period for that material entity. Those are two separate models and two separate numbers.

And we have the same concept for capital as well for resolution capital execution need. Right? Same concept post-bankruptcy, how much to make sure that those surviving entities can remain going concerns.

The key, and Rick said it earlier, is
that we don't know the scenario. And the firm
doesn't know the scenario that failure will
occur.

And it's about capabilities. And a
lot of these models, RLEN and RCEN, which is kind
of post-filing estimation of what you need, are
built on what the firms are already doing in a
lot of ways.

But we're asking them to do it at the
material entity level. Short term cash flow
estimation. Right? The models are already
developed around stress testing.

So, the key for capabilities is
getting at the material entity level and
understanding that.

But also, weaving this into, and it
goes to a question or a comment that we had
earlier, weaving these concepts of RLEN and RCEN
into management reports. And having the treasury
functions calculate these on an ongoing basis.

And as the firm is moving through
stress into recovery, their ability to calculate
a number that's so important like RLEN, which is how much you need to get into -- survive through bankruptcy in an orderly way.

To be able to calculate that number for management with accuracy and reliability, so that they can have it on a very frequent interval. So that management and boards know, and again it ties into the governance mechanisms that we spoke about earlier.

So management and the boards understand, when I get here with some buffer over here, right, I need to start taking some actions.

So, those are kind of the liquidity and capital getting just a little bit into the details without, you know, needling it all out.

MR. KOHN: So Anat asked -- Anat asked earlier about whether they can assume access to the Federal Reserve. They don't, right? No. So this is their own liquidity.

MR. MORGAN: Right.

MR. HERRING: And the 30 -- the assumption on 30 days is by the end of 30 days
these subs will be recapitalized.

They will regain access to the -- the wholesale financial markets, because they'll be so well capitalized, stabilized.

MR. DELFIN: Well, no. There's a few that the RAPs, RCAP, RLAP, the RAPs as are consisting, think of those as how much do you have under stress.

So, how much do you have with a 30-day stress using an internal liquidity stress test bad world. Where you can't move it back and forth. There are frictions, because there will be.

And think of the RENs that liquidity execution needs, that capital execution needs, as the -- how much do you need? This is what I have under stress with friction. Here's what I need.

The importance of these two, they're independent of each other.

MR. Kohn: Um-hum.

MR. DELFIN: Is you need to file when you have what you need.
MR. KOHN: Right.

MR. DELFIN: That gets you through.

The 30 days is just in the determining how much you have. Do you have what you need for 30 days.

Does that make sense? Do you --

MR. KOHN: But the need is confined to 30 days.

MR. DELFIN: I'm sorry, in the -- this is the -- we should have been more subtle. But, when we wrote these guides, when we wrote the RAPs, we could have said how much HQLA do you have?

But we -- that would have not provided the under stress problem we were trying to get at. So, how much HQLA do you have under at 30-day stress, material entity by material entity where you can't move it back and forth.

MR. KOHN: Right.

MR. DELFIN: That's a much harder number. That's the RAPs. The RENs are how much do you need to protect your strategy. When you have meets need, is when you file.
In terms of stabilization, you -- your
need takes it. The market is not going to come
back to you day one. Even if you recap.

Even if your material entities recap.
Even if you leave your long term debt behind.
Even if we all believe this is great. Sorry.

MR. KOHN: Right.

MR. DELFIN: Stabilization is going to
be a while along. So you still have to deal with
the troth post-filing before stabilization.

Firms then need to support the
stabilization period. And why there is any
return from outside sources.

If they can support the return from
outside sources, that's fine. But they need to
support it and meet with realistic assumptions
and based on facts that actually exist. Not
fanciful assumptions that they'll just magically
get x, y, or z.

MR. HERRING: Could I raise an issue
with regard to how you measure liquidity?

I can understand why you've adopted
high quality liquid assets. It is after all, something we have to measure anyhow.

But we should bear in mind that that's a politically negotiated amount that has a lot of very dubious assumptions in it about how much you can get out of selling a junk bond. It has a lot of assumptions about what the asset markets will be like when you want to actually get liquidity.

And that's very troubling. Because it was set up for — well, for a very political purpose, basically to help the Europeans meet a liquidity standard.

And I'm unhappy about it being used as kind of the absolute gold standard of liquidity.

MR. DELFIN: Understood. There are arguments actually for being able to rely on other sources of liquidity. That is if you can take the discount.

MR. HERRING: Um-hum.

MR. DELFIN: Other things may be available. But, what we try to do in the RAPs, was use a fairly conservative thinking about what
available resources would be.

But they're not perfect. They're not easy.

MR. HERRING: Yeah. No, I just think -- I just think for your purposes you might be able to get at it.

MS. BAIR: Yeah. And he's so right. That you're going to be dealing in an economic tumultuous time if this happens.

And so whatever those HULAs are, are going to -- probably a lot of the corporate's going to be downgraded to junk. I mean, so you -- you've thought about taking an extra haircut, in gauging the adequacy of liquidity in this kind of post-failure environment.

I mean, it seems like, you know, I agree with you completely. But, just you're going to use it because it's there.

And the firms are used to it. Just take an additional haircut against it. Or maybe or something like that.

MR. DELFIN: Yeah. I didn't think we
hardwired it terribly strongly.

MS. BAIR: Yeah.

MR. DELFIN: But I'll acknowledge that.

MR. BODSON: So Ric, did you say you assumed no access to Fed window?

CHAIRMAN McWILLIAMS: I think -- no, I mean it -- I'm not saying what happened in 2008, if you had a car you could get a loan. But are you talking about like Treasuries? You know, you are -- that's a pretty severe assumption.

MS. ADMATI: Well, I don't think that the assumption is no access. The assumption is more correctly, I think for a status of not relying on that access. Right. So, we're not making, you know, it's --

MR. DELFIN: Yeah. We're not saying that the Fed will or will not do anything at the time.

MR. BODSON: Okay.

MR. DELFIN: What we're saying is when
the firm writes its plan, it can't rely on as public sources their support.

MR. HERRING: I think a strong --

MS. ADMATI: Bonds are their friends, will decide.

MR. HERRING: It goes back to some initial filings where some firms were planning to rely on the Fed for a year or so.

MR. DELFIN: Yeah, yeah. No, I mean --

MS. BAIR: That's easy.

MR. DELFIN: To say -- but to say no to -- to say no is not as draconian, right.

MS. ADMATI: Yeah. And we don't have that vocalized. So we wouldn't, you know, we're just assuming that that's not. Yes.

(Simultaneous speaking.)

MS. BARRAGE: So to Director Gruenberg's earlier point, one of the things we want to highlight before moving to 2017, is what does the public understand about this Guidance?

What does the public understand about
these firms? And so in this Guidance, we actually put some specific markers for firms to hit in their public sections then.

And my colleague, Nathan Steinwald will walk through those.

MR. STEINWALD: Thank you Alex. So, since the living will rule was issued, it contained a portion of requiring the firms to prepare public sections of their plans.

And include those with the filings. And since every time we get a plan, we make those public sections available to the public.

As Director Gruenberg mentioned, in late 2014 we received a presentation at this Committee from Professor Herring. And he had some constructive suggestions about the then current state of the public sections.

So following that meeting, and working with the Federal Reserve, we provided additional guidance to the firms on the public sections. And what they should contain in their 2015 filing.
And in those 2015 filings we did see more information about the firms, including their material operating entities. What they did, how they engaged with the larger firm as a whole.

We saw more information about the strategies. And we saw additional information about what sort of firm they envisioned emerging at the end of the process if they were able to go through their preferred strategy.

In the 2017 Guidance, or Guidance for 2017 that was issued in April 2016, we also provided a little additional guidance to the firms. And in the 2017 filings we received still further information.

So the public plans now also describe the management process that the firms will go through in managing the stress into runway, into resolution. They describe the mechanisms that they built to support it.

So they described the contractually binding mechanisms, the calculations that they incorporate into the various triggers and
decisions that they'll have to make at a high level.

And they describe how they responded to the shortcomings, to the deficiencies, and the individual elements of the Guidance for each of their plans.

So we think that overall, over the past three years, the public sections have improved. We think there's some evidence of how they're being used.

We see that the rating agencies have now adjusted their methodologies for evaluating the holding companies and the subsidiaries. They've removed some of the systemic uplift that they provide to the holding companies. Because they have come to feel that there's enough support for the idea of the single point of entry strategy.

Where you would have a holding company fail, and the operating entities would continue. So there's some difference in how they've been rating those different entities.
But, we think that the public sections along with some of the other transparency have improved. Public understanding especially from market participants. But we'd be interested in additional thoughts on how to continue to improve those efforts.

MR. HERRING: I would certainly applaud what you've done. And it is orders of magnitude more informative than the first round for sure.

It's also longer and more detailed. I'd like to see a little more standardization of reports that's a little easier to make comparisons.

But I think the really lamentable thing is that nobody in the rest of the world has followed your lead. There is absolutely no transparency in what would happen anywhere else as far as I can tell.

There may be some documents somewhere. But, you know, I think you've led the good fight. I just wish you had more followers.
MR. DELFIN: There is some work overseas. So to come to the aid of our foreign friends, in hopes they come to mine one day.

The Bank of England has done a pretty good job of providing transparency on its resolution strategy. It's called the Purple Book.

It's a nice book that we actually look to in thinking of ways to improve some of the understanding of the strategies.

I think what's different though, because we have Title I, we have firm developed plans.

MR. HERRING: Yeah.

MR. DELFIN: And you're right that other jurisdictions do not have a parallel processes that we have. So, you don't have transparency regarding firm created plans plus their plans.

Now I do think other jurisdictions are looking at the progress that we've made under Title I and thinking about that. But, their
transparency has been on the other side. But it has been quite good.

MR. HERRING: Well, yes and no. You really don't know how much progress they've made in terms of restructuring and rationalizing firms.

And you know, it's not helping the market much to have some sense that regulators have thought about it, and they think they know what they're doing.

MS. ADMATI: Well, Europe is just at the beginning of the banking unit. And we do have some of these banks in this country, Deutsche Bank or a lot of these European banks.

So, and they're, you know, they're not able to do much at all. They don't even have deposit insurance.

And then they, you know, they're at the beginning of the resolution. They hardly are able to do it on small banks, you know, the kinds that FDIC does for breakfast, so.

MR. HERRING: But one of the good
things about requiring larger foreign banking operations to file living wills and have a public section is it really has raised the attention of their loan supervisors and regulators about what, you know, their direct disclosures ought to be.

And it's going to be too much for many of them to meet the standards. And as you know, some of them are still struggling.

But I think even though people could argue that it maybe once again the U.S. asserting extraterritorial powers, it really is having a balance of a very positive effect.

MR. COHEN: You know at the risk of piling on on this issue, I have always thought that 2008 was more a function of contagion then interconnectedness. And contagion in itself is a function of lack of information.

So, I think what Dick has been pushing for is very valuable. Now, there are many parts of bank supervision which have to be, should be confidential.

This is not, I think, one of them,
because of the systemic issues. And to pick up
with something Dick said at the very beginning,
what's going to be important is if there ever is
the need to actually implement one of these
plans, that the foot not come off the gas in
terms of disclosure.

Because for systemic reasons, it's
critical that everybody understands what is going
on.

MS. ADMATI: But the disclosures to
the public just on a regular basis as
corporations, are poor for the large ones. I
mean, we've heard it from many investors, you
know, Paul Singer and Kevin Warsh says that, you
know, black boxes investors, you know, don't like
them.

So there's sort of, you know, there's
a mutual hate between the banks and the equity
investors because of the disclosure being
forward. So those are accounting disclosures.

You know, and there are footnotes that
you can't understand what the risk is. You know,
there's what's inside the big banks like Eisinger and Pecnorri (phonetic), where would it be just trying to read the disclosures of Wells Fargo back in 2014, '13?

MR. DELFIN: Yeah. I haven't been at the SEC in a couple of years.

(Laughter.)

MS. BARRAGE: We've, you know, been the beneficiaries of a lot of the feedback. We've gotten a prior SRAC.

So, it's important to tie that progress back. But also to think about, you know, future developments in this area.

So, thank you -- thank you both for your feedback.

MR. HERRING: If I may make one suggestion about additional clarity I would like to have. It's interesting to know about why the nonmaterial entities, and apparently some of them really are things you do worry about, are nonmaterial.

We don't really know about that
sector. There's a huge number of nonfinancial subsidiaries.

And you know, I take it on faith that there probably are good reasons that they don't matter. But it would be really nice to have broad categories explaining this is irrelevant because it's a leasing subsidiary and nothing much happens.

I don't think that would be -- risk proprietary information. But I think it would help round out the picture and make people feel a little more comfortable that they could match what you're saying with the other data we have, which indicates there's still thousands of subsidiaries out there.

MS. BARRAGE: Right. Well, to address your earlier question on the definition, you know, firms -- firms designate their material entities based on whether they support a core business line or a critical operation.

So, that's kind of the fork in the analysis. And we've actually done a lot of work
with firms directly to understand their thinking on that.

MR. HERRING: But isn't their thinking the same? Could we -- could somebody on the outside know, is that material just for you or for everybody?

MS. BARRAGE: Um-hum.

MR. HERRING: You know, if there's -- there's a sense in which it would be nice to have a little more clarity in the definitional lines. So that you aren't surprised if something goes under.

MS. BARRAGE: Yeah. That's fair.

MR. FISHER: Yeah, Dick's putting a finger on what I was calling the horizontal problem inside a subsidiary. How do we know whether the volatility, liquidity, maturity, mismatch inside that are something we should worry about or not.

MS. BARRAGE: Um-hum.

MR. FISHER: It's a much harder question to get your hands around, especially
outsiders, but you as well, then the sort of vertical problem of the relationship between a holding company and the big subsidiaries.

Right, that's sort of a neat epistemological problem.

MS. BARRAGE: Yeah.

MR. FISHER: The deep question of what's going on down there in the subsidiary is much harder for us to be confident of.

MR. KOHN: So the banks themselves or the holding companies decide what's a material entity? So, I can see the potential for disagreement about the goal of financial stability, and what they think maybe immaterial to them, maybe important to the financial system.

So do you guys have --

MR. DELFIN: So we, as Alex said, we have requirements about a material entity should be X. And the firm describes, what are their material entities.

We ask, how did you get to this? Why not that.
MR. KOHN: Okay.

MR. DELFIN: And then that points out whether there is a basis for making information their self.

MR. KOHN: And you evaluate it in terms of your -- the goal, the government's goal of the stability?

MR. DELFIN: Um-hum.

MR. KOHN: Okay.

MR. WALL: And we have the authority to tell them if any entity is material.

MR. KOHN: That's what I was trying to get at, yes.

MR. HERRING: So, you look at the ones that they've deemed not material, and say, uh, I'm not so sure about that?

MR. STEINWALD: So, prior to receiving the 2017 plans, we worked with the firms. We got an assessment of their -- we got a preview of their methodology of how they make these determinations.

And then we looked at the actual data.
And the data is both financial and operational.
So, it's not just transactions or obligations,
but service dependencies.

So you make sure you're getting all
the service entities. You know, it might not
make a big mark on the balance sheet, but it
could be important for the operations of
different components.

And then we evaluate it in the context
of the whole firm. And with the single point of
entry strategy and the need to maintain
continuity, it puts a risk on, you know, any
entity that fails and is no longer meeting its
obligations to the firm or providing the services
that it was providing, puts the strategy of
continuity at risk.

So, we evaluate the methodology and
then we've looked at the actual data.

MR. MORGAN: So, I think that's a good
segue from moving from the 2016 Guidance to where
we are on this slide, which is the 2017 plan
we'll review and the findings.
So I'll just cover a little bit of how we got into the review process for the 2017 plans. The Guidance, as you remember, was issued in April 2016.

And it was for the July 2017 filings. So the Guidance was available, of course, as a reference for the firms.

In the interim period between the Guidance being published and the filings, a lot of interaction as we discussed already between the agencies and the firms. A lot of engagement and meetings.

We issued frequently asked questions, I think it was in September of the 2016. And met with the firms to kind of explain those FAQs to them.

As Nathan said, there were surveys conducted by the joint teams of the Federal Reserve and the FDIC, digging in a little bit deeper into some specific areas. And getting some more information to preview information for us before the plans.
And then as the plans were filed, the teams were -- the integrated teams from the FDIC and the Federal Reserve, started the work. We had weekly touch points with the firms through that process of the review.

And then, you know, finally kind of fast forward now from July to December, that's when the findings of the December -- of the July 2017 plans were released.

And the result of that you could read from the letters, is that we noted significant progress that the firms had made in the areas that we were kind of signaling and talking about in the Guidance.

We had no deficiencies, fewer shortcomings in the letters as well. But we did flag and identify a couple of areas that need to continue work.

And as a matter of fact, I think there's always work that's going to be needed in these areas. So, it's not a stopping point, but just a point to move forward from.
And Alex, I think, is going to cover
some of those other areas that we identified.

MS. BARRAGE: Right. Thank you Mike.

So, December 2017, here again, we're drafting
letters to each of these firms. Public letters.

No deficiencies. So you've taken the
Guidance. They've incorporated into their BAU,
or business as usual.

And many ways the first part of the
letters for each of these firms is highlighting
the significant developments they've made to make
themselves more resolvable in bankruptcy.

So, they really range across a number
of areas.

MR. MORGAN: And those are the only
letters. There weren't secret letters.

(Laughter.)

MS. BARRAGE: Yes. This is the
official public letters.

MR. MORGAN: Just so you're aware of
that.

(Laughter.)
MS. BARRAGE: So, they've now proved their liquidity and -- excuse me, liquidity and capital forecasting capabilities and resolution.

They've developed play books to ensure continuity of access to their payment, clearing and settlement services. They've funded subsidiaries.

They've prepositioned a number of their material entities, as we touched on earlier. They've entered into secured support agreements or contractually binding mechanisms to guarantee these applications as a kind of source of strength in resolution concept.

They've modified their services contracts to include what we call resolution friendly language. Which basically says, if you're a counter-party on a contract to one of these G-SIBs, as long as you continue to get paid in resolution, you'll continue to provide the services.

So, these are in many ways belts and suspenders provisions. But fintech largely
incorporated these provisions into their agreements.

Separability, and Mike Morgan actually is our resident expert on separability. They have identified objects of sale across all of their organizations.

They've set up due diligence virtual data rooms. And Mike, why don't you talk about that.

MR. MORGAN: Yeah. So we spoke about that earlier. So I think it's a good point to come back to with a little more information.

The Guidance does require firms to identify objects of sale. And that would be whether it's in their preferred strategy or not their preferred strategy. It could be as a contingency for what they want to do.

And some of the expectations that are in the Guidance is they have a process that kind of is ongoing for this identification. It's not kind of a one and done. It's a refresh.

And then once they're -- and there's
governance associated with that. That kind of goes up to the top level, the top levels of the organization for those objects of sale that are selected.

And then once they are selected, play books that describe actionability. So not did you just, you know, select it, but have you identified the impediments? Operational, financial, or legal, whatever impediments maybe there for that object of sale. Have you identified them and mitigated them if you can? Right.

And a buyer analysis is also a part of that. Now, I would admit that there's more work to be done there.

I think we could probably do more work around buyer analysis as well. But, it is part of what we did expect for the firms in separability.

MR. HERRING: Are these subjects of sale subsidiaries? Or can they be trademarks or other assets they have on their balance sheet
that aren't necessarily legal entities?

MR. MORGAN: They can be a combination. We did not specify.

So -- and we'd like a range, right.

So some firms can give us a range.

MR. HERRING: No, I was just curious about the --

MR. MORGAN: You know, it can be an equity sale. Right, because it's a discrete entity. Or, you can imagine, you know, it could be portfolios that can be easily scalable as well.

MR. HERRING: Okay.

MR. FISHER: Could I press you? I mean, it's wonderful to make that process more efficient and to have data rooms set up. And think of all the ways you can make the asset more liquid.

In those moments though, if you turn that into pressure of time that speed is good, you're not going to get as much money as you could if you could take longer.
So, I just want you to think about removing frictions is good. Insisting on speed is value destruction. Because you get a smaller and smaller buyer base the faster you insist on acting.

MR. DELFIN: Well, but we're not requiring the sale.

MR. FISHER: No, I know. But, even in your modified plans, you might be implicitly imposing assumption that speed is always good.

And their aspects of efficiency is good. And efficiency of identification and ease of severing. And there are lots of frictions that you want to remove.

But I don't think you quite want to adopt the assumption that speed is always good. Because you'll define the buyer universe in too small a way.

A good sale is going to take place with someone who's not in their obvious buyer universe.

MR. BODSON: Which states the obvious.
Problems are fast. Solutions are slow.

MR. FISHER: Yeah.

MR. BODSON: Right. And that's what you see in any wind down situation is they keep on coming at your one after the other.

And trying to work your way through the solution, to your point, is always going to take, I think, with all these plans you've got to recalibrate all of them to take that into consideration.

Because it's not going to happen the way you expect it to happen.

MR. REED: And careful on relying too much on that as a solution to the problem. My experience is when somebody knows you have to sell something, you don't get any money.

MR. FISHER: Yeah. That's my point.

MR. MORGAN: I think the point, a good point that I didn't make, I should have made up front, is that we're looking at the plans to see if the resolution plan itself relies on the sale. And they do not.
So this is about optionality. And if there were a reliance on the sale, it would be factored into the capital and liquidity modeling and forecasting.

But these are options, right. This is optionality. But the plan doesn't swing that.

MR. REED: And I assume it's global.

MS. BARRAGE: Yes.

MR. REED: In other words you might sell subsidiaries in Brazil or something.

MR. MORGAN: Yes. The -- you could include the entire operation.

MR. DELFIN: And just to reiterate, it's the board that's making the actual sale decision if they choose. We just want them to have choices and to eliminate the frictions.

But when they sell, how they sell, and if they choose to sale, that's their choice.

MS. BAIR: But if the -- if they need to raise the cash and if they don't, you're going to risk a system of disruption of an op sub going down, right?
So you've had all this planning, but maybe it's not going to work. So, beggars can't be choosers. And so the thing that's making me uncomfortable in this conversation is I'm going back to the Lehman Brothers days, in the summer when they just couldn't get their price.

So, you know, and beggars can't be choosers. And we're talking by definition about a mismanaged firm.

MR. MORGAN: Yep.

MS. BAIR: Got himself into a difficult situation to begin with.

So, my only caveat is, yeah, that shouldn't be the resolution strategy. They should be prepared to be able to do it if that is a necessary step to avoid the system disruption.

MR. DELFIN: Right. But Mike's point is that the strategy doesn't rely on it.

MS. BAIR: I get it. And I get that's absolutely right.

MR. DELFIN: So this is in addition,
MS. BAIR: Right.

MR. DELFIN: As optionality.

MS. BAIR: But -- yeah, I just don't want --

MR. DELFIN: If they can't do it, strategy still is available.

MS. BAIR: Right. And with that, you should -- the regulatory shouldn't step in and force sales.

MR. DELFIN: Right.

MS. BAIR: Because they wouldn't get a good price. That's the only thing I want --

MR. DELFIN: Got you. Understood.

MS. BAIR: I think is popping up. That's also a bad thing to say though as well.

MS. BARRAGE: So again, major enhancements to the plans for the U.S. firms. We want to spend a little bit of time addressing the largest foreign banks.

Again, similar joint review process.

Same statutory standard. And for that Mike will lead us in that.
MR. MORGAN: Right. So, the large FBOs were provided an extension from the 2017 plan to be able to file in July of this year, 2018.

And that was because of the Federal Reserve's Reg YY, and the requirements around that. Including the requirement of a formation of an intermediate holding company.

And in addition, the Federal Reserve and the FDIC jointly released Guidance for the -- the four large FBOs that we're talking about here.

And that was released in April 2017 for the 2018 plans. The Guidance is similar in many ways to the domestic guidance.

But it's got some important distinctions of course. A fundamental assumption is no foreign parent support.

And the scenario is that the U.S. operations experience material financial stress. And the foreign parent was unable or unwilling to provide sufficient financial support for the
continuation of U.S. operations. And at least
the U.S. IHC files for bankruptcy.

In addition, the Guidance included a
section on branches. So we wanted the firms to
describe for us their branch network in the
United States.

And how it interacted with the IHC,
the legal entities within the United States. And
the connectivity and the services that are
provided from the branches to the IHC to look at
alliance.

And then a section on the group plans.
Which these are, of course, pieces of a larger
group, foreign group.

And to try to at least get an
understanding at least as the firms know, of how
they’re fitting into the larger strategy from the
foreign parent or the home country.

So, the -- we've had a lot of
engagement before the July filing period, as we
did with the domestics. A lot of touch points
along the way.
The plans came in in July. Our teams again have been working collectively in an integrated fashion, the FDIC and the Federal Reserve.

And we are finalizing our review.

MR. HERRING: Will there be public releases of whether it's regarding lease as well?

MS. BARRAGE: That's our expectation.

MR. REED: You know, one issue, which is, and we're going to go again later today into international, but it's clearly a friction point with the foreign banking community.

Is they do not believe they are being fairly treated under Crapo, which was referred to earlier. I don't think that quite yet that's a fair analysis, because they aren't treated at all.

I mean, there's just been no resolution. And I think that the absence of a defined approach is worse than any -- almost than any approach could come out.

So, I would urge that there be a
decision made on how you're going to treat the 50
to 250 IHCs. And articulate it as soon as
possible.

MS. BARRAGE: Thank you. So, I don't
think our Title I discussion would truly be
complete until we go back in time again, and talk
about in many ways the reasons that we do this
work. Which is, to avoid another situation like
the Lehman bankruptcy case in 2008.

For that we have Judge Chapman, one of
our newest SRAC members, along with former
Chairman Sheila Bair.

And I'd like to introduce Judge
Chapman as someone who's been intimately engaged
on these efforts to address bankruptcy issues,
both within her fellow judge community, but also
with the agencies.

And so, we are infinitely grateful for
the contributions of someone who has a very
unique perspective on this work. And so with
that, I give it Judge Chapman.

MS. CHAPMAN: Thank you Alex. Good
morning everyone. It's great to be here. And thank you Chairman McWilliams for affording me the opportunity to speak to everybody today.

So, as you've heard and by way of background, and most importantly, in order to provide the Committee with context for my remarks, I'm going to talk about Lehman. One of my favorite -- one of my favorite subjects.

And I apologize -- am I on now?

MS. BARRAGE: I think so. Is she on?

Okay.

MS. CHAPMAN: All right, is that better? Okay. Very good. So, I have been providing over the liquidation of the Lehman Estates for almost five years now. I looked a lot younger when I started.

(Laughter.)

MS. CHAPMAN: And I assumed the reins of the case when Judge James Peck retired in January 2014.

In addition to handling Lehman, I have a full docket of Chapter 11 cases, large and
small. Over the years I've presided over the reorganization of many firms that are familiar to you.

Perhaps one of the larger ones that you have heard about is Ambac. I was the presiding Judge in the Ambac case.

So Lehman's Chapter 11 cases have often been described with superlatives. And here I love to quote Judge Peck.

Judge Peck has called Lehman "the biggest, the most incredibly complex, the most impossibly challenging international bankruptcy that ever was."

I think the proceedings now for Puerto Rico are going to be right up there as well in the annals of history.

CHAIRMAN McWILLIAMS: Do you have that one too?

MS. CHAPMAN: I do not have that one.

(Laughter.)

MS. CHAPMAN: My very good friend, Laura Taylor Swain was selected by the Chief
Justice to preside over that. And it couldn't be in better hands.

But as we mark the ten-year anniversary of the collapse of Lehman, I believe it is vitally important to reflect on certain aspects of the Lehman demise that have informed the path forward as we continue to work on resolution planning.

So I'm not telling you anything you don't know. But I think it's important to repeat it.

The collapse of Lehman Brothers unleashed a financial crisis around the world. Credit markets froze. Global trade all but ceased. Asset values plummeted. And jobs vanished. Lives were ruined. And I've seen that in the last few years.

In bankruptcy court during that historic week, the drama of Lehman's sale of its headquarters and its broker/dealer business to Barclays unfolded.

And again to quote Judge Peck, "there
was a sense that if the sale didn't go through, what was already horrible, would just get much worse."

There was the pressing question of whether a transaction that massive and complicated could be approved on such short notice. The due process rights of the creditors and all the stakeholders had to be considered and respected.

The day before the filing, on September 14, 2008, Lehman was an integrated global enterprise. It was the fourth largest investment bank in the United States.

The next day at 1:10 a.m., and yes, I know the exact time, without preparation, it devolved into adverse factions of affiliates and third-parties competing over hundreds of billions of dollars of assets, and a vast universe of undetermined liabilities that ultimately exceeded one trillion dollars.

More than one hundred Lehman affiliates became the subject of foreign
insolvency proceedings in more than 16 jurisdictions.

I'd like to say this is Lehman by the numbers. And I think the numbers are very powerful.

Lehman counter-parties themselves filed Chapter 11 cases of their own across the United States. Ultimately, after the bar date was established, there were over 67 thousand claims filed against the 23 Lehman Chapter 11 debtors, asserting in the aggregate more the 1.2 trillion dollars in both direct and guaranteed liability.

There were many novel questions of law to be determined. Including, but certainly not limited to, questions related to Lehman's derivatives portfolio. Which was comprised of over 10 thousand contracts and over a million transactions.

Perhaps the numbers that say the most about the enormity of Lehman, are the docket numbers. That's the number of entries on the
dockets of each of the cases.

As of last week, and I checked, we are up to docket number 59,113 in the main LBHI case. Docket number 14,799 in the LBI SIPA case. And thousands more in the more than 300 adversary proceedings that have been filed.

So just by way of comparison, in a typical mega, multibillion dollar Chapter 11 case, it's hundreds of filings. Maybe a thousand. But nothing, nothing like this.

In my opinion, and admittedly I'm biased, the Lehman cases reflect the highest and best use of Chapter 11 in the public interest.

Against the back drop of the global financial crisis, the stakes could not have been higher.

And yet, through the work of hundreds of talented and dedicated professionals, including some who have, I think, lent invaluable advice to the agency and to this Committee, and guided by the calm but steady hand of the presiding judge, the parties achieved what I
consider to be a truly remarkable global consensus that enabled Lehman to emerge from Chapter 11 in just three and a half years.

A very long time in terms of the economic health of the world. But for a case of this complexity, suffice to say there are longer stays in Chapter 11 then three and a half years.

Specifically, with the help of the court, protocols were developed for the efficient administration of the cases, cooperation with the creditor's committee and its representatives, and to Professor Herring's point transparency for parties in interest, and for the public.

The parties took full advantage of the flexibility of the Bankruptcy Code and the Bankruptcy Rules. And what's more, as we've discussed, a cross border protocol was negotiated. Which provided for the orderly and efficient administration of proceedings around the world.

Apropos to what we're talking about today, it's important to bear in mind that the
filing on September 15, 2008, and what I would say the first three years of the cases, was just the beginning.

Among other things as I've mentioned, the Lehman filings have reached a tsunami of claims against the Lehman Estates, as a result of the termination of Lehman facing derivatives.

While over 10 thousand counter-parties asserted claims against the Estates that arose from one million derivatives trades, in addition, there were the billions of dollars of mortgaged backed securities claims asserted against the Estate by Fannie Mae and Freddie Mac, and the identification claims that flowed downstream from them.

There were complex claims of every imaginable sort. And some you can't even imagine, lodged by former employees, trading partners, customers, everyone who had a relationship with Lehman as of September 15, 2008.

In addition, the Lehman Plan
Administrator has had to initiate hundreds of
lawsuits against parties from whom Lehman needed
to recover assets or assert damage claims.

Here's my favorite number. To date
over 124 billion dollars has been distributed to
creditors. With more distributions to come.

That number I should add, is net of
the many billions of dollars of costs and
professional fees that have been incurred in the
cases.

As of now, the level of unsecured
creditor recoveries are over twice what was
projected as of the time the plan was confirmed
in 2011.

Generally speaking, unsecured creditor
recoveries are now at approximately 40 cents on
the dollar. And substantially more than that in
the aggregate for holders of claims that also
hold guarantees from LBHI.

Of particular relevance to the issue
of the resolvability of U.S. G-SIBs in
bankruptcy, is the use of the SPLE structure
along with the ISDA Protocol to help avoid massive claims related to derivatives terminations and the concomitant degradation of value associated with wide-scale terminations such as occurred in the Lehman file.

I have to say that resolving the so-called big bank derivatives claims were the biggest challenge I have faced as the Lehman Judge.

All of those claims have now been resolved. But the human and economic cost was substantial.

During one two-year period of time, I presided over six lengthy trials to fix the amounts of almost 10 billion dollars of derivative claims asserted against Lehman. The longest of those trials, Lehman versus City Bank, lasted 42 days, and it was only half done when thankfully the parties settled.

The Lehman case has unquestionably stressed the Chapter 11 bankruptcy process. From a very narrow creditor perspective, the
bankruptcy process worked reasonably well.

Perhaps most importantly though the myriad causes and effects of the Lehman filing have informed many of the aspects of resolution planning.

Here are some salient examples. First and foremost, as we've discussed, Lehman was in a liquidity crisis.

Second, the filings resulted in a balkanization of the dozens of Lehman entities around the world.

Third, the Lehman filings revealed internal organization and operational structures that were severely lacking.

Finally, the Lehman filings revealed that large financial institutions were carrying enormous risks on their books that they did not understand or have the ability to quantify remotely accurately.

I believe that the work that the FDIC and the firms have done since 2008 has gone a long way to address each and every one of these
issues.

It has been my privilege to work with the FDIC staff, sophisticated and dedicated practitioners, and very smart and interested academics to ensure that resolution works from a bankruptcy process perspective.

Active engagement with regulators, members of the judiciary, and academic experts have also formed the predicate of significant judicial outreach efforts.

Two years ago under the auspices of the Wharton Financial Institution Center, and Professor Herring, a symposium was held at the University of Pennsylvania to discuss and debate the resolution readiness of U.S. G-SIBs, to explore and detail the SPOE strategy and hurdles to its success, and to outline how this all would work under the current Bankruptcy Code, and perhaps under legislation yet to be passed.

Building on the success of Wharton Symposium, we have sense held day long educational sessions for the bankruptcy judges
from the Southern District of New York and the District of Delaware.

The judicial session I believe, were particularly valuable exercises. Not only were the judges very engaged and incredibly curious, but they were able to become generally familiar with SPO resolution.

And the practitioner and agency participants gained valuable insights into areas of concern raised by the judges around both process and substance.

In addition, during this past year, under the auspices of the Federal Judicial Center, we have presented an overview of the SPOE resolution to bankruptcy judges nationwide.

And while we all hope that SPO bankruptcy remains untested, our mission has been to ensure that any judge who might face the next Lehman, is prepared to the greatest extent possible, to act swiftly, and have an understanding of the resolution process.

To that end, we are now working with
the Federal Judicial Center to create a guide to judicial management of the U.S. G-SIB bankruptcy.

So as I've said, it's been my pleasure to work with the agency, with the folks that I'm smiling at here today. And to help contribute to the education of the judiciary, something I believe is a critical component of resolution planning.

Thank you so much. I'd be happy to answer any questions that you have.

CHAIRMAN McWILLIAMS: I like that she delivered all that with a smile.

(Laughter.)

MR. HERRING: Judge Chapman, is it -- would it be unfair to characterize the new guide for judges as sort of a play book for judges?

MS. CHAPMAN: Yes. It would be entirely fair to characterize it as a play book for judges.

And I think as Alex and Ric have talked about, the firms have gone very far down the road in their play books. Right down, I
believe, to the level of thinking about and
drafting what their first emotions would look
like.

No judge can be in the position to
make a decision other than based on what's a
record before them. But having general
familiarity with what may come before them on
resolution weekend, is very important.

MR. HERRING: So it will not be a deer
in the headlight situation for them. That's the
plan.

MS. CHAPMAN: The hope was -- yes.
The hope is to avoid a deer in the headlight
situation. But by all means, for all the judges.

Now the judges who sit in certain
jurisdictions have more familiarity with complex
cases then others. But we're talking about a
bankruptcy on an entirely different scale.

I think the largest concern that we
have, and the play book, I think, would help, is
the timing pressure. You're talking about an
exercise that would occur over resolution
And the concept of having to be ready, thoughtful, with an understanding of what's riding on your decision on that Monday, is very daunting.

And that's one of the many drivers of this education process. So that everybody is generally familiar.

Just as they are generally familiar with what they need to do in any large filing. For example, most recently the filing of Sears, which required access to tremendous amounts of debtor in possession financing on a very, very short time frame.

MS. ADMATI: I have a question.

MS. CHAPMAN: Yeah.

MS. ADMATI: So actually you're speaking about Lehman, you know, and it brings me back to the very first Sheila led committee meeting. Where we had the hypothetical of what would have happened, and the smooth way in which this process would have dealt with Lehman.
And I remember Paul Volker asking, okay, so you're going to resolve Lehman in two days. And what are you going to do with all the others that -- because Lehman was the only bankruptcy, because that's the only one that was allowed into bankruptcy. The rest were not.

But, if we don't want to have bailouts, then we may have to have a whole lot of these. And, I should say, much bigger then Lehman. Because JP Morgan Chase has, I believe, a million, at least a million contracts of derivatives open in one snapshot, so.

MS. CHAPMAN: I think the numbers that I talked about though were in 2011, in the discouragement stage. And I believe FDIC put out a report at the time indicating that everyone thought the recoveries would be 20 cents.

So what you see though, what I've seen in going through all the derivatives cases, is a tremendous degradation of value that occurred as a result of the termination of all the Lehman facing derivatives.
And everybody during that week was trading, trying to figure out what their books looked like. Trying to match up their risks.

And I hope that as a result of the process that's occurred, they're much better than that. Systems were all over the place.

It was my experience that people had no idea what the risk was. What trades were open. What trades were not.

And had Lehman been able to be stabilized, had -- I mean, it's all what if, what if. Had those contracts not terminated, there might not have been a bankruptcy matter.

MS. ADMATI: Maybe those deficiencies would also --

MS. CHAPMAN: What Lehman -- what -- even as "good" as these numbers are, it's important to remember, all of the equity like claims, including the deferred compensation and retirements of all of those employees, are gone.

And they were -- and I've had to rule that they're gone. Notwithstanding, you know,
tearful testimony from a lot of folks.

So even if you had managed to
stabilize it from a value proposition, that would
have -- it would -- value would have never flowed
down that far.

MS. ADMATI: Well, it's definitely
capital, I think they were listed as.

MS. CHAPMAN: Yeah.

CHAIRMAN McWILLIAMS: Any other
questions for Judge Chapman?

MR. KOHN: So I guess -- just so I
understand a little better. So what happens on
that first weekend, and I'm looking at the chart,
the flow chart from earlier.

MS. CHAPMAN: Right. Right.

MR. KOHN: Is the New HoldCo is set
up. So you're not dealing with --

MS. CHAPMAN: Right.

MR. KOHN: Thousands of -- so there's
the hold -- the New HoldCo assumes the qualified
financial contracts.

MS. CHAPMAN: Yes.
MR. KOHN: And it guarantees them.

MS. CHAPMAN: Yes. Once that order is signed. That's the key.

MR. KOHN: Once that order is signed, right.

MS. CHAPMAN: Right. Right. So you have everything. There's a standstill over the weekend. The status quo is preserved.

MR. KOHN: Right.

MS. CHAPMAN: You have the transfer to the -- to the bridge company. You have the elevation or the transfer and assumption of the guarantee liabilities.

MR. KOHN: Right.

MS. CHAPMAN: And then in conjunction with how the ISDA contracts work, those then are not terminable. You have all of the action, if you will, is then up at newly recapitalized holding company.

And then the idea is, things settle down relatively speaking. And then the process, the bankruptcy process plays out at the holding
company level.

Creditors are all there. And then decisions are made whether or not you're going to sell a material sub. And all that would depend on the facts on the ground at the time.

MR. DELFIN: And I think David might join us in a bit. But -- and the creditor issues are also simplified by the clean holding company rule. Which requires that the firm have certain minimum amounts of long term debt available.

But also minimize the amount of short term creditors that might be there. So the creditor stack is simplified so that if the QFC is transferred -- if you're in a new trust, then the bankruptcy case should be, knock on wood, much simpler.

MS. CHAPMAN: Right. But to the point about the importance of there not being pressure to sale or an imperative to sell, you would avoid the fire sale to Barclays on day five.

So, that wouldn't happen.

MR. KOHN: Because the New HoldCo
would be so well capitalized.

     MS. CHAPMAN: Yeah. There's no debt.
     MR. KOHN: It's the theory.
     MS. CHAPMAN: That's the theory.
     MR. KOHN: It would be able to access

the market and re-enter into new derivative
contracts. Because of what -- and so I guess to
Marty's two points earlier, were on my mind too.

So you've already addressed the cross-
border issues. There's just more -- it's not
solved yet.

But there's a lot more cooperation and
understanding. And then the record --

     MS. CHAPMAN: I mean, there's the hope
that the balkanization would occur less than it
did, yeah, to the file too.
     MR. KOHN: And the other one was the
liquidity issue.

     MS. CHAPMAN: Right.
     MR. KOHN: So, basically having 30
days of high quality liquid assets should get you
to the point where this -- this new institution
can access --

MS. CHAPMAN: Right.

MR. KOHN: The markets. That's the theory.

MS. CHAPMAN: Right.

MR. WALL: But also, you're preventing the early terminations of the debt.

MS. CHAPMAN: Right.

MR. WALL: And that would lead to a huge liquidity drain. It did in this case. Or a lack of liquidity.

MS. CHAPMAN: Right.

MR. WALL: And that actually, I will say, goes to another point. Which is, so the knock on effects, the contagion effects of that kind of -- of those kinds of fire sales.

And therefore hopefully immunized or stopped. Because that was part of that. It was part of the Lehman transaction, was that you've got the other funds and others that were severely impacted by the depression of asset prices.

MR. KOHN: Right. Now the liquidity
draw on AIG was because it was downgraded. So, this new entity will have to have a pretty high - I don't know what's assumed in the -- about what the rating of the new entity is.

But that would be absolutely critical for the amount of liquidity it needed.

MR. DELFIN: Right. So remember that the material entities underneath continue to be open and operating. They're funded. They're recapitalized.

Part of the dire for the public plans is for the rating agencies to be able to see more and work with the first in order to steer the re-rating, because that is a key part of the stabilization post resolution.

MR. KOHN: Yeah.

MS. DELFIN: Yeah. Remember also that we're talking about those RENs at the liquidity needs, the capital needs.

If that's -- the firm fails with a buffer. So that day one it's not going to the market.
MR. KOHN: Right.

MR. DELFIN: Day on it's -- so it has time to let its book, you know, come back. Stabilize, work with the credit rating so you can go back to market.

That's where that stabilization period is.

MR. REED: My experience is you should double.

(Laughter.)

MR. REED: You always end up biting off more than you thought. And you really do have to have the liquidity.

I mean, it can't be some minimal ratio that sounds good until you need it. Because the markets won't provide it.

MR. DELFIN: And that is it. There are many challenges.

(Laughter.)

MR. DELFIN: The biggest challenge is to what degree can you relay on the assumption that the model can really fit? You have comfort
in the number.

    And right now things are good. So the numbers are easy.
    
    MR. REED: Sure.
    
    MR. DELFIN: It's whether you can get those numbers right at the time. It's a challenge.
    
    DIRECTOR GRUENBERG: There's going to be an essential judgement made by the public agencies. The Fed and the FDIC trying to make a judgment -- oh, sorry.
    
    MR. MORGAN: It maybe on. There we go.
    
    DIRECTOR GRUENBERG: Under the statute, the Fed and the FDIC have to make a judgement, can the bankruptcy process handle this in an orderly way or not.

    That's really the threshold. And if not, then we utilize Title II and order a public liquidation authority.

    If you have any, it seems to me, any significant doubts. Because I think it's fair to
say, you only get one shot at this game. Right?

MR. MORGAN: You only get one shot.

DIRECTOR GRUENBERG: And you've got to have a pretty high level of confidence.

MR. COHEN: Ric, to be clear though, on the plans, I have not thought that New HoldCo was actually supposed to access the market for quite some time.

It's really the market is at the operating system. Yeah.

MS. BARRAGE: So, in recognition of the development of these plans, our guidance, we think another important piece of the puzzle and the patchwork here is the regulatory development.

So we'll spend a little bit of time talking about external TLAC, the holding company, and the ISDA, QFC tables, and then we'll complete our discussion with next steps.

So, David Wall?

MR. WALL: Yeah. So I know we're bumping up against their lunch deadline. So I'll try to be pretty brief.
Indeed, and then we've talked about sort of the -- what the agencies have done kind of administratively, or you know, internally up to this point.

I think it's also important to give a full context of where the regulatory developments have gone over the last couple of years since we -- since the Committee has met.

All right, so we're going to focus on two things. One is the development of the TLAC rule under the -- by the Fed. And I know we've discussed some of that already in some degree.

And also then talk about what's going forward under the -- with the Banking Agency's rules on QFC termination and stay and transfer rules.

So, first of all, as you're no doubt aware, the Board of Governors on December 2016 put out its final rule for total loss absorbing capacity for the G-SIBs. The rule also applies to top carry and U.S. intermediate holding companies of FBOs.
But, the ones that are required to establish those holding company under Reg YY, we'll talk about those later on when we get into the international area.

But so I'm just going to focus on the U.S. banking, U.S. bank holding companies' requirements under the Rule. The objective basically of the Rule is to provide this kind of capacity in order to improve the resiliency of those covered companies.

And to avoid the kind of stress that would lead to insolvency. And if they do enter into insolvency or face material financial distress, to improve their resolvability in that event.

To this end, the Rule the TLAC Rule imposes certain requirements under liability structures of the covered DHCs. And covering in real the part for our purposes, two areas.

One is the requirement to maintain the loss absorbency capacity through the issuance of eligible capital and long term debt instruments,
together with a parallel requirement to meet a
certain -- to maintain a certain amount of
eligible long term debt.

And the second aspect is, as we've
talked about, alluded to earlier, the clean
holding company requirements.

And these are generally limit --
prohibit bank holding companies from incurring
certain types of liabilities and entering into
certain arrangements that we think -- or at least
the Federal Reserve thought could exacerbate
systemic risk in the case of the firm's distress
or failure.

I want to go over briefly each of
those in turn. With regard to the TLAC and LTD,
that is total loss absorbing capacity in long
term debt. Keep the acronyms a little bit in
check here, requirements for the holding
companies.

The basic requirement, is that covered
bank holding companies have to maintain a minimum
ratio of TLAC and a minimum ratio of eligible
long term debt in addition to certain buffers that are added onto them.

And calculations are a little complicated. But they are based off of both risk weighted assets, and leverage assumptions.

But, they -- one of the important points to note here is that there are -- this is a parallel structure. You've got the TLAC instruments that the bank holding company has to issue and maintain.

You've also got long term debt. Which is a related but separate requirement. And one might ask why did we end up in that situation?

Well, you've got -- you have to have a certain mix that includes long term debt. And that was because there was a thought that imposing a separate long term debt requirement helps to ensure that a firm has loss absorbing capacity in excess of the going concern equity capital.

Which debt capacity is not the same risk of depletion before the firm enters into
resolution or volatility for that matter. And that will go towards enhancing a successful resolution in the event or in the end, I guess.

The TLAC is -- what's eligible for TLAC or what counts for TLAC is Tier One capital and the unpaid principal amount of eligible debt securities. There's a haircut for amounts that are due to be paid within one year.

Similarly, the eligible instruments for counting as long term debt consists of the unpaid principal amount of eligible debt securities. In this case they are subject to haircuts for amounts due to be paid within the next two years.

The -- for both of these requirements the securities that are eligible have to comply with certain criteria that are designed to make sure that they can be easily marketable.

First of all they have to be governed by U.S. or Federal law. They are obviously unsecured. To do so otherwise would reduce your loss absorbency considerably because you have to
deal with the collateral offset.

The securities also have to be what
the Fed call plain vanilla. Which I thought was
an interesting term. But, has nothing to do with
ice cream. It has to do with the fact that they
are limited acceleration rights for this debt.

So, the debt should be sticky. It
doesn't have features that reduce it as a result
of credit events that happen at the bank holding
company level. And not convertible to equity.
That makes sense.

And then there has been a whole debate
about whether structured notes would qualify for
TLAC or LTD. And in the end, the idea was that
structured notes are, since they're bespoke or
unique and hard to value, they were going to be
restricted from eligibility.

And there are some ways in which some
of them could be possibly counted. But by in
large, they're eliminated from the category.

And as was mentioned before, the Rule
itself actually requires that bank holding
companies publicly disclose a description of the financial consequences to holders of the debt if the covered BHC goes into resolution or bankruptcy.

And therefore, I think, we're not relying solely on securities log disclosures to make sure that the market is aware of what the consequences would be. And what -- and where these instruments are positioned within the structure.

Full compliance with the law is -- with the Rule is required by this January 1. That this January will be regarded as not going to be much of an issue for U.S. bank holding companies, because as their current liability structures are set out. They pretty much meet and actually generally exceed the TLAC requirements by a good margin, so.

Now, onto the clean holding company requirements. These again, are part of the -- are part of an effort to facilitate an efficient and successful resolution.
They're designed basically to prevent or eliminate as that Rule comes into effect, bank holding companies which would be subject to the SPOE action, from being party to transactions that could impede that resolution, increase the risk that the resolution would create some kind of contagion and -- destabilize the financial system by their -- by the fact that they create interconnections with other institutions.

The -- more specifically, the covered -- the bank holding companies are prohibited from issuing short term debt, creating set off rights against subsidiaries, entering into QFCs other then credit enhancements with third parties, which are, let me just put it simply, are already accounted for by the ISDA Rule.

And -- or and also prohibited from accepting or being -- back the shares of upstream guarantees by the -- by their subsidiaries.

I think there is a small, 5 percent aggregate amount of non-contingent liabilities that may exist in the system for, you know, sort
of prey predators. And those are sort of accepted from the eligible debt requirement rule, even though they will -- would be pari passu with the -- with that long term debt.

MR. HERRING: David, what's the rationale for having trade creditors involved and come in? It's sort of a -- it's purely financial what kind of -- they don't really have the kinds of regular expenses you would expect.

MR. WALL: You know, I think it's really a catch all for them. I mean, there are going to be some -- some services that need to be provided by the holding company.

So, I think they have a complete --

MR. HERRING: So it's going to be like if you have accounting receivable?

MR. WALL: Yeah. You know, paper suppliers, utility companies, those sorts of things can be.

MR. HERRING: Okay.

MR. WALL: But don't -- so they can be
accepted from what would otherwise be a short
term debt. To the extent that they had those,
you know, those short debt arrangements, they can
be accepted from the -- from requirements.

So, let me stop there and see if
there's -- and I know that was a lot in a short
amount of time.

But, if there's anything, any other
questions or thoughts on the TLAC Rule, or the
clean holding company requirements?

(No response.)

MR. WALL: Okay. If not, let me turn
it over to my colleague Ron Crawley to talk about
where we are with the ISDA and U.S. stay rules.

MR. CRAWLEY: Thanks David. In the
next few minutes, in a few minutes, I'm going to
quickly discuss the recent ISDA U.S. stay
Protocol, which was published in response to
banking regulations meant to address this
disorderly unwind of qualified financial
contracts, which are QFCs, due to early
termination.
We all know this, we've been discussing this this morning. Historically, counter-parties can rely on safe harbors under the U.S. Bankruptcy Code to terminate certain financial contracts upon the insolvency of a financial entity.

The term -- these termination rights can have a destabilizing impact, as we know from the Lehman case.

The exercise of cross default rights and Lehman matter resulted in a seizure and liquidation of collateral. I also understand there were substantial losses we all know, and significant outflow of liquidity.

As an industry led initiative, the international Swaps and Derivatives Association known as ISDA, consulted with consulting the FDIC, the Federal Reserve, and the OCC along with foreign regulators, established in 2015 the Universal Protocol as a way to begin to address these issues, including too big to fail.

In 2017, the U.S. Banking Regulators
took an even further step to address too big to
fair. Specifically, the FDIC, the Federal
Reserve, the OCC issued final rules requiring
U.S. G-SIBs, their affiliates, and certain
foreign G-SIBs to amend their QFCs to include
certain provisions designed to limit the ability
of counter-parties to close out these contracts
in the case of a G-SIB resolution.

In particular, I'll be very quick
here, in particular, the QFC stay rules require
QFCs of certain G-SIB entities to contain
provisions requiring or providing for cross
border recognition of U.S. special resolution
regimes such as Title II and the FDIA, along with
stay and transfer provisions leading to cost
defaults arising from the entry of an affiliate
of a G-SIB entity into certain insolvency
proceedings, in particular, the U.S. Bankruptcy
Code.

For G-SIB entities to comply with the
QFC stay rules, all G-SIB counter-parties,
including buy side and smaller sell side market
participants, are effectively required to either adhere to the Universal Protocol that was established in 2015, or a newly developed U.S. Protocol.

There was also -- there is also an opportunity to comply with the Rule by lateral amendments.

In 20 -- I'm sorry, in July 2018, just a few months ago, in response to these rules, ISDA published the 2018 U.S. Protocol after consultation with the FDIC, the Federal Reserve, and the OCC.

The U.S. Protocol is a tool really to assist market participants adhere to compliance states required by the QFC stay rules. They -- I want to just mention quickly, there are certain tier compliance states which begin on January 1, 2019 under the Rule.

It is important to note finally that the U.S. Protocol is offered as an option to address buy side firms' concerns of potential over-compliance via the Universal Protocol. And
to incentivize buy side firms' compliance with
the QFC stay rules.

It is important to note that U.S. G-
SIBs have adhered to the U.S. Protocol. And by
my count last night looking at ISDA's website, it
appears that over three thousand market
participants, including the U.S. G-SIBs, have
adhered to the protocol. Thank you.

MS. BARRAGE: Thank you very much Ron.

Earlier I promised I'd bring this group to today.

So here we are today. Welcome.

What's next? For the U.S. firms,
remember the Guidance document we had up there?

When it was originally issued in 2016, it was
issued publically.

This year in July, we issued -- we
reissued that Guidance with some additional
updates on key areas for public comment.

We received public comment from the
industry and other players in September. Staffs
at the FDIC and the Fed have been reviewing the
Guidance.
A lot of that Guidance, I have to say was pretty helpful. We are very close to reissuing the final Guidance, having considered those comments, along with an accompanying preamble. So that's to come.

The U.S. firms will be filing their next resolution plans in July of next year. So, hopefully they'll be able to use this reissued Guidance in that endeavor.

For the foreign banks, as Mike Morgan mentioned, staffs are completing their reviews of those plans. And we expect to have feedback letters for those firms in the short term.

And finally, in this era of tailoring, resolution planning and the resolution plan rule will be tailored in the future. Our Chairman has been public about those ongoing efforts. And so that's another upcoming feature of resolution.

So, with that, I want to thank everyone on the panel today. And the Committee for your very insightful questions. Ric or Art?

MR. REED: Can I ask a question? You
know, traditionally banks get into trouble or financial institutions, because of asset problems, which then triggers liquidity and so forth.

Have you looked at the risk of an Uber moment? You get a non-financial institution that really disrupts the business of the established players?

And the question would go across to all institutions. And so the established players lose the revenue, have the expenses, and become uneconomic. Much like owning a taxi company when Uber comes into the market.

But there’s a substantial, I think, risk in the financial world. And these changes tend to occur quickly.

You know, a new product offering comes in. Gets good acceptance, as Uber did. And the established entities are at severe risk.

And I wonder, do any of your models, matching that the nature of the problem is revenue disappears, expenses stay?
MR. DELFIN: So, our models aren't based on the cause. We don't know what that would be.

But we want to make sure the firms have the capabilities and systems in place to, whatever the cause is, adapt to it, and apply their regulations that way.

MR. REED: And so it would say it would crash all institutions.

MR. DELFIN: Right, so we can't, or we don't, we work with our supervisory and our colleagues at the Federal Reserve on risks more generally.

Our focus here is about --

MR. REED: If it happens, what do you do?

MR. DELFIN: And making sure that if a firm fails, whatever the cost, we can't adjust the cost. It's -- mortgage backed securities. I can't do anything about mortgage backed securities.

But, the exaggeration or the increase
in risk that flows from fair, really we're the
first, fair to Lehman to the rest of the G-SIBs,
we can help mitigate that contagion associated
with the cost from resolution.

That's the -- that's where we play.
Is that hoping whatever the risk is, apply. It
applies to the system. It applies to the firm.

But it's not made worse by contagion
and by disorderly resolution. That's where --
that's where this work is.

So making sure we don't worry about
this.

MR. REED: You do worry about those.

MR. DELFIN: We worry a great -- I
worry about everything.

(Laughter.)

MR. DELFIN: I'm a professional
worrier. But the tool --

MR. MORGAN: I can testify to that.

(Laughter.)

MR. DELFIN: But the tool that I'm
applying today, is the resolution and process.
And having each of these firms take the steps to
and get the results of the backup rule. It's a
tool that I'm applying here.

I worry about every single little
something, unfortunately.

MS. BAIR: So yes, so Rick used to
work for me. So I can attest to the fact that he
was -- and that way we were in a partnership
because I worry about everything too.

You know, I think though, we talked
about this a little bit a zillion years ago when
I was involved in that.

But I think if it's a competitive
instruction, where you've got a new fintechs
coming in or whatever, so the service is still
being provided to the public. It's just by a
different competitor.

And so really the objective of this is
not to prop up the banks or keep them around if
they don't need to be around. It's just to make
sure whatever those services that are needed for
the public continue.
So that might -- I think that scenario is a little bit different from, you know, the kind of meltdown we had in 2008. But yeah, the corporate data only knows who, wherever it might come.

I just wanted to make a little advertisement for the Systemic Risk Council. We have a couple of our members here. But we --

CHAIRMAN McWILLIAMS: We don't like competition.

(Laughter.)

MS. BAIR: Okay. Sorry about that.

So, we filed a comment -- so as you all know the Fed and the OCC have proposed some significant reductions to the largest FDIC insured banks. About 121 billion of capital.

But it relates to if they change the enhanced supplementary leverage ratio. So, that's tied to TLAC. So that will reduce TLAC too, I assume if that happens. And I don't know if that happens, and I hope it doesn't happen.

The one point -- so, I'll just refer
people to the SRC comment letter on that. I think it takes away the well why we think that's a bad idea.

But also to underline the point, back to the internal TLAC comment earlier, if the Fed and OCC do that, and gosh, I hope they really don't do that, because that's going to increase the risk of a large FDIC insured bank failing.

But if they do, it's going to make it even more important to have -- so you're going to release that capital back up. And then you're going to have to bring it back down if there's a distress situation.

So to make sure you have rock solid, legally enforceable commitments to get that capital back into the insured banks. And again, I would -- if you haven't read our SRC letter, I think I sent it to you all on that.

I think this is extremely important. And I wanted to make clear that those two issues are related.

MS. ADMATI: Can I make another
comment? Because I see that the afternoon is on Title II. And this is still a Title I comment.

So, we're trying to stop too big to fail here by making fail possible. But, you know, fail is sort of the pound of cure.

And so going back to Sheila's comment versus the few ounces of prevention that we have. And obviously, to the extent that it's part of resolution and failure, it's not going to be, you know, pretty to convert and all this other stuff.

So, the question I've been asking, and last week Ron (phonetic) asked the same question, why isn't TLAC, TLAC? Why since you have to force them to issue it anyway, why is it not the gold-plated loss absorption that Sheila was mentioning?

We're talking not any regulatory capital, but equity capital. So, you know, I told somebody who is not over here from the Vice -- your Vice Chair this year, this year, 2018 at Stanford of saying too big to fail list stays here. And then you don't solve the problems of
too much debt with more debt.

So, he didn't like TLAC as a solution to resiliency, stability. And I think that there's still a challenge of justifying that.

MS. CHAPMAN: Yeah. And I think, you know, to the point you made earlier in that is the question is well, what if this isn't one off? Right? What if the, you know, --

(Simultaneous speaking)

MS. CHAPMAN: And that leads to the question about, you know, the adequacy of the post crisis reforms put into place.

If we feel confident that the system is a lot more resilient now, then there should -- there will be a couple of these credit vendors probably will get into economic distress, because there are always a couple who don't manage well.

But if we've not done as good a job as we should with post crisis reforms, then you're going to have across the board thing. And you won't have to have bail outs again.

Probably the Fed this time. Not
taxpayers. And that's not a happy situation for
the Fed. But, I think that's -- it's inevitable.
You can't take all eight into a Title
II or a Title I. It just can't happen.

MR. HERRING: I'd like to piggyback on
John's comment and I think Anat's really as well.
And that is that there may be some entities that
are not in our, you know, but that do become
systemic --

MS. BAIR: Well, that's also great and
on and on, right.

MR. HERRING: And we have sort of
nothing set up to deal with them. In principal
FSAC was supposed to be active in this area.

But, --

MS. BAIR: They don't want to anymore.

MR. HERRING: Just based on what I can
see of what they're reporting, it's been pretty
low level activity. And they're certainly not
aggressive in trying to --

MS. BAIR: No, because they dropped.

They keep dropping.
MR. HERRING: Yeah, well they've dropped a number of people that are designated. But, I think it is an important problem, not in protecting the profitability of the banking system, but in trying to make sure that we have tools to deal with systemic risks wherever it ends up in the system.

And it -- I mean, I'm worried that we didn't really address that as we got right there.

MS. BAIR: Well that's funny. I think that just gets back, you know, where the post crisis reform is adequate.

And Title I was meant to address that. And it's -- if there are truly no systemic entities outside of those eight, then it's fine we don't have any Title I designation.

But who in this panel is confident that there is truly nobody that's systemic outside of those -- those few --

MR. HERRING: Well, I would like to inquire about the mechanism we have for making that decision.
MS. BAIR: Yeah.

MR. HERRING: I'm not sure that it's actively enforced.

MR. DELFIN: Wow. Really. I hope you found that we've made substantial progress on it.

MS. BAIR: Yes.

MR. DELFIN: A number of these things that were central the previous financial crisis. I do think we've walked through a lot of that today.

And that maybe a different --

CHAIRMAN McWILLIAMS: Oh good. Lunch people.

(Laughter.)

(Whereupon, the above-entitled matter went off the record at 12:06 p.m. and resumed at 1:30 p.m.)

CHAIRMAN McWILLIAMS: Hello, everybody. We're going to make the trains run on time. So it's our Part 2 of today which is appropriately Title II. Given how long we spent on Title I, I anticipate this is going to be another very
engaging and deep conversation because now we --
if some of the stuff in Title I has not been
tested, stuff in Title II definitely has not been
tested, so I'm dying to hear what you have to say
about it. Without further ado, please.

MR. MURTON: Okay, great. Yes, we're
going to talk about the Orderly Liquidation
Authority which has been mentioned as the back
stop that Dodd-Frank provided in the event that
bankruptcy would be judged to have unacceptable
systemic consequences.

Since this Committee met last time,
the U.S. Treasury issued a report on Orderly
Liquidation Authority and we'll touch on that a
little bit. But mainly I think we'll talk about
the work that we've done to prepare for the
eventuality that we would actually have to do a
Title II resolution. So we'll hear about that
work and we welcome your reaction to that and
feedback in the work that we've done.

After that session, we'll go to the
international segment of it, and as was mentioned
before, global cooperation is key to the success of one of these and we'll talk about the work has been done both bilaterally with the other key jurisdictions and also on a multilateral basis.

So with both of these efforts, the Title II and the international, we'd like to find ways to be more transparent about what we've done. You've heard a lot on the Title I front, the progress that we've made in transparency there and we're thinking about ways we can do more of that on the Title II space as well.

So with that, let me introduce the panel. Rick and I are joined by Herb Held, Ryan Tetrick, Betsy Falloon, and Pen Starke. And we'll start by turning it over to Herb.

MR. HELD: So one of the biggest helps for working on Title II has been the advances that have taken place in Title I. And all the Title I planning has put us in a much stronger position if we are ever called upon to exercise our Title II authority.

We hark back to the early years of
this Committee. We came here and presented our SPOE strategy and that was SIFI fails, all the assets go to the bridge financial institution, liability is left behind. We do evaluation of the firm at that point, evaluate and we do claims for equity exchange, hopefully exit six to nine months, I think we might have said in the first one, pretty optimistic.

One of the members of the Committee at some point -- one who is not here -- said I don't think that's a liquidation. In our next meeting of the Committee, we instituted -- we showed you a different schematic where we put into the bridge and you have optionality on what happens to the various operating entities under the bridge, and an optionality that maybe the broker dealer has wound down, sell off the asset manager, possibly break up the bank.

And so after that, the firms all moved to SPOE and they developed optionality within their plans in a much more detailed way which feeds back into our planning, giving us many more
options that have been worked out in detail by
the firms on possible exit strategies for a
bridge financial institution.

What will actually happen is really
going to be dictated by the economy and the
problems in the firm at the time. But it gives
our board the option to choose which method works
best at that time.

We've done a lot of work trying to
come up with how you implement a Title II
resolution, so there's here's the strategy and
you figure out all the steps necessary to
implement that strategy. I think we talked about
that at our last Advisory Committee, and then how
you do each one of those steps, all of the
procedures, all of the people involved, all the
legal documents. And we've done a lot of testing
of that work with our board and inter-agency.

And then on transparency, we've done
work in the space with other regulators and
foreign regulators. We've not done a great deal
in outreach other than chairman speeches on what
we would do in detail in a resolution.

So OLA really builds on our long-standing tradition here at the FDIC and it was really written from the FDI Act. And the bridge financial company is really just our old bridge bank that we've used a number of times blown up to the largest possible size it could be.

It gives us tools to implement an orderly resolution for a failing firm in scenarios where the bankruptcy just didn't work out or it doesn't appear it will work out. The statute and the Treasury report that Art mentioned just a minute ago does reiterate that bankruptcy is the first resort in any resolution and that there's a high bar to actually implementing a Title II.

One of the key considerations is that failure within bankruptcy would have caused systemic risk to the country. And pretty much everybody on this side of the table and I'm sure our board members would highly prefer a bankruptcy to a Title II.
CHAIRMAN McWILLIAMS: Funny that you say that.

(Laughter.)

MR. HELD: Title II, just because the bankruptcy hasn't worked means that something is really horribly wrong both with the firm and that their plan isn't going to work. So we're handed the worst possible situation to deal with.

What we've seen is that the work in Title I, I've always wanted to do a slidometer and that my percentage of scenarios where Title I would work or the opposite end of it is where Title II is necessary. So if you look at that meter and say 2011, we're pretty much at zero on Title I working. The plans really didn't address resolving the firms. And I think that that meter has moved dramatically over.

There are still scenarios where Title II is going to be necessary and I think that you never get to 100 percent. It's somewhere less than that. So we need to engineer a plan for a Title II resolution. As the plans become more
and more mature and robust, that possibility becomes less.

MR. KOHN: What indicators would you be looking at to see whether you should shift from Title I to Title II? What would be the -- liquidity would be one?

MR. HELD: I think liquidity is the key.

MR. KOHN: Yes.

MR. HELD: The firms have developed the measures of we need so much liquidity and we need so much liquidity when we go into bankruptcy. If you're far beyond that number, if the firm has not acted, it's an indication that bankruptcy is not going to work. If there are measures that say we need $100 billion in liquidity to go into bankruptcy and you're at 50 --

MR. KOHN: I guess the question would be how did that situation arise and would the FDIC and/or the Fed intervene -- when it got to 99?
MS. ADMATI: Well, it says that the supervision regulation is vague because these are all bank holding companies. They do have access to liquidity supports. So in a scenario where it's really a liquidity problem and not a solvency problem, then so now, you know, we can't have it both ways.

If the regulation has failed to prevent insolvency, then we're insolvent. Now we have a hole somewhere.

MR. DELFIN: If we go on a time line and we just talked about Title I. We've talked about the models and the methodologies. We've talked about the governance mechanism, the triggers. You would imagine a firm suffered some sort of stress and the first state is obviously bankruptcy, so the firm would have its models. They'd be assessing their liquidity needs. Is there liquidity availability, their capital needs, their capital availability, and their governance triggers?

And we don't know the scenarios.
Again, that's part of what this is all about.

But if for some reason there was a shortfall in the amount of liquidity necessary, that is a place where again policy makers would make choices and one of those choices might be well, what does Title II add that bankruptcy doesn't have? And liquidity would be one of those things.

That being said, if the models work, if the liquidity is available, then that's much easier to think about bankruptcy. I think those are the kinds of trade-offs.

You also don't know, we get asked sometimes well, what if you're dealing with two or three at the same time? You know, if I were a policy maker and the first one maybe bankruptcy was going pretty well, and then another one comes along or a third, at this point maybe, one thinks about a different choice. I want to give maximum optionality to the folks that would be making those calls at the time and then do what I'm told.
(Laughter.)

MS. BAIR: What about if the regulators, the foreign regulators are telling you, we're going to ring the fence if it goes into bankruptcy? Would that be a factor? I mean I don't think that should be in the realm of possibility.

MR. DELFIN: I think it's safe to say, obviously, would prefer Title II to Title I.

MS. BAIR: Right.

MR. DELFIN: And so if it gave them the keys, you know which key they choose. They don't get a key.

MS. BAIR: Right.

MR. DELFIN: So what we've tried to do in Title I is reduce the probability of that happening.

MS. BAIR: Yes.

MR. DELFIN: And then the impact if it did happen so that we have choices.

MS. BAIR: But they did have the keys on that. They could ring the fence in their
jurisdiction.

MR. DELFIN: They could, but what ring
fencing means --

MS. BAIR: Yes?

MR. DELFIN: Is different. So if the
operating company pursuant to Title I has capital
and liquidity, yes, they could put it into
resolution, but on what basis? It has recap. It
has liquidity.

MS. BAIR: So that will depend on
their perception of the credibility of the Title
I process.

MR. DELFIN: True.

MS. BAIR: Which may be different from
yours. So I'm just saying if that's their
perception, and you think you can survive Title
I, does that push you into Title II? How would
you handle that?

I mean because a ring fenced bank with
a lot of non-U.S. operations, a substantial ring
fence could really destroy a lot of value very
quickly.
MR. DELFIN: Sure. But you would --

I would think in incentive terms, the foreign regulator also doesn't want to destroy value.

MS. BAIR: Right.

MR. DELFIN: And so --

MS. BAIR: They want to protect their home --

MR. DELFIN: Of course. But if they have in their jurisdiction a material entity with capital and liquidity --

MS. BAIR: Right.

MR. DELFIN: -- and a functioning resolution regime.

MS. BAIR: Right.

MR. DELFIN: Would they want to spike it? That is, with a premature ring fence? And then what does ring fencing mean? There's hard ring fencing and soft ring fencing.

MS. BAIR: Right.

MR. DELFIN: You might reduce the amount of flow back and if our regime isn't reliant on that flow which is what we're trying
to build, a regime that doesn't rely on the flow
back, then we're in some way protected from that
risk. But obviously --

MS. BAIR: But they're going to -- if
they've got a lot of capital liquidity in their
home jurisdiction that gives them an added
incentive to ring fence, doesn't it? They may be
worried about you trying to pull it back or the
Bankruptcy Court trying to pull it back. You
don't think that's why they do it in the first
place? I think you could argue that both ways.

MR. DELFIN: You could. And part of
the work we're doing and we'll talk about
internationally, is to make sure that all
jurisdictions understand single point of entry
whether they're in Title I or Title II, whether
folks are comforted by the steps that are being
taken, the firm's work with foreign jurisdictions
on their Title I plans, talk about them with
them, to mitigate the likelihood of that
happening, can't guarantee it, but that's the way
we've tried to approach it is reducing the
incentive to doing ring fencing and then reducing 
the impact were it to happen. But if it did, 
that's a risk.

MR. TETRICK: I think just to connect 
back to the morning conversation, too, right, one 
of the assumptions that they have to build into 
their modeling tools is that they don't have 
these inter-group inter-affiliate flows, 
particularly across borders. So in bankruptcy, 
that sort of soft ring fencing, hopefully, 
they've built a machine that can deal with that.

CHAIRMAN McWILLIAMS: Marty, you have 
something?

DIRECTOR GRUENBERG: I was simply 
going to say I think it's a fair question to 
raise. It's something we'd have to deal with. I 
would assume one, there would be on-going 
collaboration between the key jurisdictions. And 
if our agencies, it's a big judgment call to 
believe that the bankruptcy process can handle 
the failure in an orderly way, that there's 
sufficient capital and liquidity to meet the
needs with a sufficiently high level of probability. This is not -- I don't view this as something you allow for a close call. You have to have a high degree of confidence to consider this. As we said, you only get one shot. And if, hypothetically, that's where our agencies were with a substantial degree of confidence and we were engaging in consultations with our counterparts that said we think this will work for the following reasons and we think this could go forward with stability for our system and yours, I think that's something, based on my experience, the foreign jurisdictions would take pretty seriously. I don't think they're going to at this stage of the game, reflexively ring fence which is not to say it wouldn't happen or that it's not a consideration. We would have to do a lot of work across border. I think that's the scenario.

I don't think they would do it reflexively, but it's fair to say they may also have a higher level of skepticism in regard to
bankruptcy as well because it's not the way their systems would work. So it would have to be an on-going engagement to see if we could get to the same place. And the bottom line is we really—given some of the substantial operations in both jurisdictions, we've got to get to the same place. That's got to be done.

MR. COHEN: Could I suggest this is a question that it is not in anybody's interest to answer?

(Laughter.)

And the reason is, it's not against transparency. It's because I don't think anybody can sit here and know all the factors and all the circumstances at the time as to which are going to weigh heavily and which will lead to the conclusion between Title I and Title II. So the more you start to secure the criteria, the more you're going to be boxed in when there may be criteria you have no idea today are going to be relevant.

MR. HERRING: I certainly agree with
that position, but I think it's also true that
the people who are opposed to Title II and there
are a number of those, you know, worry about the
fact that risk aversion on the part of policy
makers which is entirely understandable, will
mean that bankruptcy really is never tried, that
when you're at the brink, nobody wants to take
the step into the unknown if you think you have a
fallback position.

To me, part of the problem is that we
haven't yet figured out how you apply liquidity
under bankruptcy. And so there might be a
tendency to go to Title II simply because we
don't know how to solve the liquidity conundrum
in a bankruptcy filing. There's no amount of DIP
financing that could possibly do it. And so, we
really need to address that under Title I, it
strikes me, to make it much less likely that
we'll ever go to Title II. Otherwise, it's hard
for me to believe that we wouldn't simply because
we just don't know. It might happen.

MR. COHEN: And I agree. That's a
very valid point, but then you can go on the
other side, and the Senator said it, there's
going to be a lot of politics at this time, and
so maybe you have a Treasury Department and
administration which just doesn't want to take
the blame for this, so they say try bankruptcy.
We're not going to do -- to put it -- it's just
so hard to figure out.

DIRECTOR GRUENBERG: If you're dealing
with an institution of this magnitude, I don't
think there's anywhere to hide meaning if there's
a bad outcome, whether it happens under
bankruptcy or Title II, the responsible
authorities are going to have some accountability
here.

I think it becomes a judgment call as
to which --

MR. COHEN: At the time.

DIRECTOR GRUENBERG: Yes.

MR. HERRING: That's why some
political people will want to remove the option
because they think they know exactly how that
will play out at the time.

MR. HELD: That always creates the third option of if you remove OLA, then you bring back bailout.

CHAIRMAN McWILLIAMS: Then they say it's the courage to act.

MR. FISHER: The question I brought up before lunch is relevant here which is we've officially made two promises to ourselves collectively. We're never going to bailout again, never taxpayers. And we're never going to run an entity like Lehman with a set of fragile liabilities through bankruptcy. The systemic consequences of doing that are pretty bad.

Well, the choice here just described is exactly this problem. The confidence with which you are choosing to let it go through bankruptcy and we'll see, it isn't just the political awkwardness of that. It's the real uncertainty question about whether that's going to work, whether collapsing maturity transformation into a bankruptcy process is
something the world is going to let you get away with, I mean the rest of the market or whether you're going to be forced into Title II. That's the substance of the choice, put all politics aside, that has to be made at the moment you're describing.

MR. DELFIN: And what we've tried to do and the statute clearly has bankruptcy as the first option and increase the range of scenarios where bankruptcy can work and certainly the Lehman world is radically different now than it was then because of the Title I planning and the work we've done.

MR. FISHER: It's still the same threshold. That's the choice. Which path are you going down, one of risking another Lehman chaos by going to bankruptcy or are you going to go to Title II and try to think you can do a better job of preventing that.

MR. TETRICK: I definitely don't want to answer the question that nobody should answer --
(Laughter.)

-- but I do want to bring in another element to the conversation on risk aversion pushing you to Title II. Just acknowledge that the Treasury report, one of the ways that they looked at this was that the presence of Title II could give you more confidence to allow bankruptcy to work, that is knowing that there's a backstop would allow you to try your first option of more circumstances than you otherwise would.

MR. DELFIN: So is it envisioned that you'd start with a bankruptcy procedure and three days in you'd say oh, this isn't working --

MR. HELD: The law allows that, but pulling a firm out of bankruptcy after the first --

MS. CHAPMAN: That's not even a thing.

(Laughter.)

MR. DELFIN: But no, I think the argument that the National Bankruptcy Conference made was that when you're in runway, certainly
right now runway should be different than the Lehman runway because there is TLAC. There is an opportunity to recap. There is these mechanisms in place which should reduce the likelihood of large scale runs, because the material entity should be recapitalized. That's step one.

But second is the argument that if OLA is available, if it goes sideways, then that reduces the desire to run further because you know that there is an option necessary. That's not to say try it out by going to one and then pull out with the other, but just existence of that backstop gives one comfort to try SPOE and bankruptcy. That was the argument the Bankruptcy Conference made.

MS. BAIR: But you probably have a pretty good sense of whether you couldn't arrange debt financing in Title I before you have to make a decision?

MR. DELFIN: So the governance mechanisms are designed to give firms time to make the decision.
MS. BAIR: So you could have a market test. If you can get market funding, then bankruptcy would probably work. If you can't, then you're probably going to be stuck with Title II. It's ironic, there's going to be the distressed institutions to deal with in Title II. It's just as simple as that.

MR. HERRING: It all comes down to trying to figure out if you can have enough liquidity under bankruptcy and we don't really have a very good answer to that. The Fed claims that it can't do extraordinary funding to this new institution, even though it's pristine by design. You can't really get the orderly liquidation facility unless you've got Title II, so once you commit to bankruptcy, you're kind of stuck.

MR. DELFIN: But stuck if the firm has the liquidity --

MR. HERRING: Yes, yes, yes. But that's the big uncertainty that I think will make it very difficult.
MR. DELFIN: Getting confidence in those numbers I think is the key.

MS. BAIR: Which is why John is right, doubly.

(Laughter.)

MR. STERN: This is a probability game and you want to make the probability darn high that bankruptcy is going to succeed. In some sense, that's what a lot of this is about.

MS. ADMATI: Can I say something? So the Senator was telling us about a particular bill that he's championing and I was referring to his testimony which I just read on the way here, so the testimony says for macro and again I'm not a bankruptcy expert, so I'm looking at -- and it says that this bill, this bill called S.1841 is not -- the bill's title to provide for the liquidation is misleading. There's no direct liquidation mechanism. It says this will not establish a robust mechanism for bankruptcy. A robust bankruptcy for too big to fail bank that's viable is not on the policy agenda and he wants
to call it -- a more accurate title would be a bill to amend Title 11 to provide a narrow and limited special purpose recapitalization. So it's a two-day recapitalization and it emerges with capital debt that is only the conversion of TLACs to equity and that's all it's doing as opposed to like the whole bankruptcy.

CHAIRMAN McWILLIAMS: If I can just ask that we not -- I want to make sure we focus on the existing tools, not prospective or possible tools. The framework we have is you can't pull a company out of bankruptcy. It's not a thing.

(Laughter.)

And Title II is the law of the land, so let's just work with those and bankruptcy, as we know it, is what it is.

MR. STARKE: Well, you can't pull a thing out of bankruptcy. Title II provides that you can pull a thing out of bankruptcy. So factually, maybe that -- right, I understand, but the law says so.
(Simultaneous speaking.)

MR. HELD: The law provides for it, but it would be such a horrible solution.

MS. CHAPMAN: That's my point.

CHAIRMAN McWILLIAMS: All right, please proceed.

MR. HELD: So OLA provides some clear restrictions on our operations that losses are going to be borne by the shareholders and creditors and now we have TLAC and LTD requirements that require that those be there at the time of resolution. Culpable management is removed and their compensation is clawed back, and that funding is available on a limited and secure basis and the firms would have to pay a premium rate, probably akin to DIP financing.

And there's an absolute prohibition against the cost being borne by the taxpayers so that the industry, if all else fails, the industry would have to bear the cost.

In the Treasury Report, there was a few things that were mentioned that are within
the -- our purview that would not require legislation and we kind of welcome these. One was to finalize the SPOE notice that we issued in 2013. Lots has changed since 2013. Firms have changed. Lots of regulations in place. We did get comments back then and we're considering that.

Disparate treatment. In 2011, we issued our claims rule and it singled out short-term debt of less than one year at origination as possibly being preferred, really was targeted at commercial paper issued by the firms that was outstanding at that time and was the cause of major problems during the crisis. It doesn't exist anymore in our firms and that's an area where we could work to change our reg.

And then the third area was on protecting the OLF to ensure that our advances from the OLF are secured in a short term as possible and that we try to use guarantees to limit the OLF's cash needs and then figuring out what that premium interest rate would be and what
the guarantee fee would be.

MR. DELFIN: But maybe just to flag overall the Treasury Report looked at bankruptcy and OLA and also suggested that we should improve the range of scenarios where bankruptcy is available. And so they also highlighted some recommendations for Congress to improve bankruptcy. So those sort of work together, I think, with a lot of what we've said today.

MS. CHAPMAN: And they were convinced that the way OLF is structured, it would be ultimately repayable. It would not put -- it would be budget neutral. It would not put tax dollars at risk, given robust planning and the SPOE structure, and the implementation of the stay on QFC termination. So all those things combined makes OLF money safe.

CHAIRMAN McWILLIAMS: You just made everybody be very silent.

(Laughter.)

MR. TETRICK: So I'll pick up from here. I won't spend a lot of time on Slide 5,
just to again do a little bit of time travel. These are the five sort of core obstacles to resolution planning generally that we put forward to the firms in our 2013 Title I guidance.

And I think one of the things we want to emphasize here is that these obstacles we found that they're universal, whether we're thinking about the issues that the firms need to solve in bankruptcy, the things that we need to solve in our Title II planning and in fact, when we're working with foreign regimes, we're all working with a slightly different tool set trying to solve basically the same problems.

And on the right hand side, a lot of the things that have been done, we've talked about today in one form or another, either regulatory developments or Title I planning developments that have addressed a lot of these obstacles.

I think international engagement, we're going to spend a little bit more time on, including on the next slide, so I'll come back to
that, but just to acknowledge that we've made a lot of progress on these sort of core fundamental challenges.

And what I want to spend a little bit more time on on the next slide is talking about going into a little bit more depth on the operational planning that we've done to be prepared to execute this authority should we need to do so.

So the graphic that you've got here represents the systemic resolution framework that we've developed to exercise this authority. The top two layers are the generic part of the framework that apply to any institution and the bottom layers the firm-specific planning that we've done.

And so at the top level we have the framework that we've built. It's designed to be -- we've identified the core steps just in responding to the heightened stress in an institution and then moving through the process to prepare for resolution, getting into
resolution through resolution weekend and
executing the authority. Those core steps would
apply just as a function of using the Title 2
authority to any type of firm and in a variety of
scenarios.

On the right side of the pyramid, some
of the things that we’ve done around that sort of
top level framework are exercises at really the
principal level to establish how this process
would work. So around the time of the SRAC, we
were between two internal FDIC operational
exercises. We spent a full day with the FDIC
Board, division directors across the corporation
going through how each of these steps would
operate. And the real goal of those two
exercises was to establish this operational
framework, did we have the right steps? Did we
know who was responsible for carrying it out?
What the interaction points would be with other
authorities, both domestically and abroad.

And then, in addition to the internal
FDIC work that we’ve done, we’ve also held a
number of -- a series of principal level inter-agency and cross-border exercises. So we held the first of those in 2012, just domestically. That was really about how the key turning process would work between agencies and how the decision might be made to get into a Title II resolution or evaluating other options and how we expect that interaction to work at the principal level.

And then starting in 2014, we held a cross border principal level exercise with authorities in the United Kingdom where we considered a resolution of a systemic firm under our authorities in the U.S., one of their firms under their authorities in the U.K. You know, those exercises are useful because there's some reciprocity. We're thinking about it both, both of us in those jurisdictions from a home and host perspective. And so, everybody knows that they need to potentially give a little bit and get a lot in terms of how the coordination would work.

In 2016, we extended that principal-level exercise to include authorities in the
European Banking Union and had a similar sort of exercise adding a third G-SIB, hopefully, only doing one at a time in one jurisdiction, not ours.

(Laughter.)

And then that's led to an on-going work program and we continue to have engagement including at the principal level and expect to conduct another further exercise where we're really exploring the decisions that principals would need to make at the time that they're responding to one of these firm's failing and setting, to the extent we can, some expectations for how we're going to engage what we're going to permit in terms of information flow and what -- I think importantly what the expectations are on the part of host authorities to support a home authority resolution.

Moving down a layer on the pyramid are the still generic tools, but supporting the broad framework, all the different sort of staff level operational tools you need to execute this
process, so there are a number of legal documents that are specified and the law that we would need to complete either internally or in coordination with other agencies, for instance, to access the order of liquidation fund or just establish a bridge financial company.

There's also just sort of staff level procedures. How do we estimate funding needs? How do we coordinate with a firm to deliver communications upon entering to resolution? So going across all those different functional areas, establishing the standing set of documents and the procedures to go with them.

Around that layer, we have done exercises in a number of different venues. So just recently, last month, we did an internal staff level FDIC exercise on all, what I call the back office functions of Title II, how do you form a bridge, claims administration, actually going through nuts and bolts in terms of how do you conduct these processes, and looking for gaps, reviewing how they work.
Earlier in the year, we conducted an inter-agency staff level exercise on the parts of Title II that would require inter-agency interaction, so the key --

MR. REED: Does Treasury determine how much liquidity you can get or do you determine that?

MR. TETRICK: So there's two parts to it. So we need to work with Treasury to determine the amount of liquidity that's available. There's statutory limits that are set, so there's a maximum obligation limit that's set in the statute. It's limited by the assets of the firm. So that's straightforward, relatively well defined.

We've issued a joint rule with Treasury on how we would come to that number in terms of what the borrowing capacity, at least the borrowing limit would be. But then the access to the order of liquidation fund is really governed by two documents that we need to agree to with Treasury. So there's an order of
liquidation plan and a mandatory repayment plan
and those, we'd work with Treasury to demonstrate
that how the borrowing would be repaid, broadly
over what time frame.

MR. REED: You'd do the work, but they
make the decision.

MR. TETRICK: We work together.

(Laughter.)

MR. REED: Over the weekend.

MR. HELD: We work with them now. As
Ryan pointed out, we do a number of exercises
with Treasury and other agencies in order to make
sure that people understand the process and the
protocols, but sure over the weekend --

MR. REED: When you'd have to decide
how much money you had.

MR. TETRICK: We all hope that the
need for OLF is not there and if it is, it's
limited and we want to find ways to --

MR. REED: There's got to be enough
convince the market that --

MR. TETRICK: Absolutely.
MR. BODSON: Is there a draw-down schedule? Can you draw it down 100 percent from day one? I thought there was a step in which I thought was contrary to fire sale concerns.

MR. HELD: The law says we can have access to ten percent of the assets, consolidated assets of the firm based on their financial statements and then if you go above that, you have to do a valuation and you get up to 90 percent of the value of the assets.

MR. BODSON: But can you get that 90 percent on day one I guess is my question?

MR. HELD: Well, you can get ten percent on day one.

(Simultaneous speaking.)

MR. TETRICK: We can do the higher valuation and the run up to resolution, be prepared to access the higher amount day one. And in fact, just in terms of preparedness, more to thinking about operational readiness, that's what we expect to be ready to do, whether or not we actually need that capacity. Hopefully, we
don't need anything near it.

And we've talked with Treasury about the scale of funding. They've seen where these numbers might fall out, their ability to deliver that if they needed to and we've worked through the operational processes to actually deliver the funds from Treasury through the Fed's wire system to support a resolution if it were needed.

MS. BAIR: Refresh my memory, those even guarantee debt too instead of --

MR. DELFIN: That's right.

MS. BAIR: Does the cap apply to the amount you guaranteed, too, or is that -- it is.

It's the same cap or not? No.

MR. DELFIN: In the Treasury report they recommend the use of guarantees and --

MS. BAIR: I agree with that. I think that's --

MR. DELFIN: And guarantees is sort of a first option.

MS. BAIR: But I'm just saying is the amount you can guarantee have the same cap as if
you were borrowing directly? Consistent with the 90 percent.

MR. DELFIN: Right, so the key question is whether it's at expected cost.

MS. BAIR: Right.

MR. DELFIN: Because it would -- then it's -- you could lever it up. Or how you count it, but guarantees are more complicated because you could be guaranteeing a large amount of money, but have very little potential costs. I think that's one, right?

MS. BAIR: Right. Absolutely.

MR. DELFIN: So do you do it dollar for dollar or do you expect the cost or do you do some other approach?

MS. BAIR: Right.

MR. KOHN: So the Fed could fund the bank provided it were well capitalized. So what we're talking about is all the non-bank stuff and the Fed's been constrained under 13.3 from funding that.

MR. DELFIN: But one thing if I -- the
chairman just gave a speech the other day. The FDIC is kind of the gold standard when it comes to bank failures, bank resolutions. But we've built that up over decades of work. We learned from each crisis, from each bank failure. We get better and better and better.

We don't get that trial and error here. So what we try to do is we do readiness exercises so we can try to break our own system and so we do quite a few of them. We do them with our colleagues here in the U.S. We do them internationally. We do them with our staff. We do them sort of regular staff. We do them senior staff. We do as many of these as we can because we don't get the benefit of trial and error like we do in others. And so this whole paradigm is based on those sort of readiness exercises as a means of preparation.

MR. REED: Is there room for any stand-still agreement with the funders? You know, during the Latin American debt crisis, and you're only dealing with maybe 30 or 40 entities
that were the big lenders, but when there was a crisis and we needed time, we could get a standstill where all of the people agreed they would not withdraw any funding for a period of time. You'd have a date certain and the lenders agreed that they were going to maintain that level of liquidity and particularly on a run in Korea which was very much being managed by Treasury.

We got all the banks to have a standstill that allowed the Koreans --

MR. DELFIN: And was there a temporary guarantee tied to that?

MR. REED: It was just that the government was involved. They trusted that they weren't going to get caught out.

MR. DELFIN: An implicit guarantee.

MR. REED: Because one of the reasons that people withdraw money is the danger that somebody will and you didn't.

MS. BAIR: That's right.

MR. DELFIN: And if you could get the
major funders because it's in their interest, too.

MS. BAIR: Yes.

MR. DELFIN: To have a standstill.

And we did use that on a couple of occasions during the debt crisis and as I say, it was quite different in the sense that you had 30 or 40 major lenders, but they were globally distributed and -- but you did get an effective standstill and runs would stop.

The U.S. Government tried to guarantee in the case of Korea and it didn't work because the Japanese banks kept taking the money out. They didn't believe, but we did get a standstill. I don't know if that's any place in your lexicon.

MR. HERRING: I think it would be very difficult in this situation. It's sort of like the bond markets where instead of having a small group --

MR. REED: No, it's a large --

MR. HERRING: -- in which you have influence, they're just huge numbers and your
ability to influence them I think is very, very difficult.

MR. REED: No, if it's widely distributed across the market, but if, you know, if there are 20 firms that constitute most of your --

MR. HERRING: We should be able to convince them it's in their own interest.

MS. BAIR: Yes, well, that might be the positive of all this interconnectedness since you have a smaller group of concentrated. And it would be in their interest if they're --

MR. COHEN: They just have to believe that it'll hold.

MS. BAIR: Right. Because if they don't and if there's a run and it's at least five minutes, they're going to be assessed for the losses, right? So it would be --

MR. COHEN: That's with this bank. Don't forget, if you're a broker, the odds are you're going to have institutional money on the other side. It's not going to be your friendly
banker down the street. They're not going to have a choice.

MR. HERRING: It's very heterogeneous.

I'm not sure how --

MR. BODSON: So it's very much dependent on who it is. It could be if was banks supporting it, sure, but if it's all institutional money, they've got a fiduciary responsibility. They're going to take their -- either sell the collateral, just take the money back and run.

MR. COHEN: Whether it will work or not, the one thing is for sure. If you start on the Friday, it will not because we saw that on AIG where there was the effort to get a number of the derivative counter parties to hold, to stand still and that lasted about five minutes.

(Laughter.)

But it can be done. It takes the planning.

MR. TETRICK: Something we can look into. You know, we also do these staff-level
exercises. On a cross-border basis, I won't go into too much detail, but we can go a little bit more granular there than we go at principal level and actually test the information sharing protocols, and that's been particularly useful.

And then I just want to touch on the bottom layer of our framework which is the institution-specific planning that we do. So you know, obviously, that starts with Title I planning. We build off that to build out firm specific Title II analysis. What are their particular systemic risks that we're solving for if we're put in a position that we need to use Title II.

One of the challenges for stabilizing this particular institution, particular operational challenges about how it operates or what business lines it's in, and that gives us information to plug into all the other parts of the generic framework that's sort of pre-built out. And it also gives us a basis on which to engage with foreign authorities on a firm-
specific level. So we use that analysis to support conversations, even crisis management groups, and you know, we --

MR. DELFIN: And just for the group, every year, we sit down with the host jurisdictions of all the U.S. G-SIBs and we also do it the other way to talk about the progress we've made on resolution planning. And that's the crisis management group.

MR. TETRICK: And those conversations are increasingly we're talking about, the firms participate. There's a regulators-only portion of the day, but the firms participate. We're talking about both bankruptcy planning, how they would execute their bankruptcy strategy, what it means for the host jurisdictions that are in the room, and then how the back stop authority would apply if it needed to.

And then just to pick up on a point that Peter raised earlier about the importance of the Treasury staff being involved, I think both — when we're engaging with the firms on Title I
planning just vis-a-vis their plan submissions
and the CMGs, they're sending their resolution
planning staff. They're also sending their
treasurer and her or his staff to participate in
these conversations, particularly now that we're
talking more about the capital and liquidity
modeling that was previewed earlier. They're
talking about how those mechanisms would deliver
resources across the group in resolution. And
there's a pretty robust engagement with the
Treasury staff.

MR. FISHER: That's wonderful. My
question really went to John which is for Board
of Directors to get that, you can look at the --
the Board can look at a CEO and have some
confidence he knows what decisions he's got to
make. But for a Board to look down into the
bowels of the deputy treasurer is really hard.

MR. BODSON: If I can make one
comment, there's a philosopher, Mike Tyson,
remember him?

(Laughter.)
Everybody's got a plan until you get punched in the nose.

I hope in your planning, you don't plan it out well. Assume everything you think is going to go right is going to go wrong and work through all the alternatives because the dumbest idea may be the one that's going to get you through the darkest part of the day.

MR. TETRICK: I think that's exactly right, you know I started this with the framework is intended to be flexible, not just for different types of institutions, but different scenarios. And it's also, I think, a good segue to the next slide which is talking about how the firm capabilities support our planning in Title II. And the whole point of firm capabilities is that the firm doesn't know what scenario it's going to encounter and this allows them to adapt different scenarios that they might be faced with.

We expect to leverage these capabilities under Title II and it also gives us
that same sort of flexibility. So I'm going to
touch on some of the -- I think we've said
notionally how that Title I supports Title II. I
think this is one of the particular ways in which
it supports us. So the fact that they have
developed governments' mechanisms that map out
triggers and actions across the crisis continuum
gives us a better line of sight into how the firm
is proceeding through its recovery plan,
preparing for resolution. We can anticipate what
actions they might be taking. It gives us a
better basis to talk to host authorities about
where we are in that trajectory, so that's been
particularly useful for mapping out the
sequencing of actions with the firm and with host
authorities across that period into resolution.

MR. HERRING: Ryan, may I ask a
question about the runway period?

MR. TETRICK: Yes.

MR. HERRING: I understand the concept
and I think it's essential, but presumably it's
not publicly announced, because if anybody knows
you're going on the road, everything is going to
happen a whole lot faster when you --

    MR. TETRICK: That's a great point.

There's not a red light that goes on that says
you're in runway, everybody run away.

    (Laughter.)

    Unless the light is on in Rick's
office. But you could imagine there would be
reluctance to initiate their planning processes
because it would have a signaling effect.

    MR. HERRING: I was thinking not that
you would have a press conference to announce it,
but it would be pretty easy to infer about what
you're doing.

    MR. TETRICK: Sure. Sure. I think
one thing is they've built these processes into
their day-to-day operations so the staff who
would be involved, Treasury staff knows the
sensitivity about the planning process.

    We've had our own conversation about
when do we start planning as they're concerned
about the sensitivity. I think our general
predisposition is that we want to have a relatively high tolerance for false positives. We're already thinking, coming in the office every day, thinking about a crisis, so we start planning at a relatively low threshold. We're resolution planning all the time. We think that's useful most of the time, hopefully, all of the time. The result is going to be a recovery, but it is a balance.

MR. HERRING: Part of business as usual, but it's likely to be less --

MR. TETRICK: Right. I think that there's in the cross-border space, too, there's starting to be more of an acceptance that it's not stress, then runway, then at some point down the line we start talking about resolution. We're setting expectation, particularly through the more focused cross border work, the TPLE work, and related, I'm sorry, the principle level exercise work, that we're going to engage early on as a matter of course and we know that there's going to be false positives along the way and we
should get comfortable with that.

Moving on to the next couple of points here so the capital and liquidity modeling capabilities that the firms have built out, so Mike Morgan went through earlier today, RCEN and RCAP, RLEN and RLAP. These tools help us assess -- first of all, they put resources in place in advance of a resolution and then they help us assess what those needs might be as you get into resolution.

I think the most critical thing to point out about the innovation here is firms already do a lot of stress testing, capital and liquidity planning. What's unique is that these are modeling capabilities that extend that, they really build on the capabilities that they already had for recovery of business as usual purposes and extend that into resolution, what are the assumptions that they make about what happens in resolution.

And we know if they say today the number is 55, that's the one number it won't be,
but it gives us a basis off of which to consider
you have behavioral assumptions about this group
of counter parties. Is that happening as we get
into the runway, do we expect that it will
happen? Did your assumptions about intra-group
frictions, were they -- they were conservative
for planning purposes, are those real when you
get into resolution?

MR. HERRING: How frequently will they
be required to recalibrate?

MR. TETRICK: So part of the
governance mechanism is to trigger the frequency
of calibration. A number of firms actually
already calibrate their metrics regularly on a
daily basis. But all of them have triggers as
they get closer to their runway that they are
calculating their liquidity and capital execution
needs daily as they get that.

MR. HERRING: Will that information be
shared with you?

MR. TETRICK: Yes.

MR. REED: This presumes that they
know what their exposures are.

MR. TETRICK: I mean there's a relationship with the reliability of these tools and the supervisory work that goes on and the reliability of their ordinary liquidity monitoring tools. Your modeling can only be as reliable as your existing capabilities are, so that's something that we have supervisory personnel and we work with the Federal Reserve and other supervisors.

MR. REED: I gather you think it's much changed from what it was.

MR. TETRICK: Yes. I didn't say -- you know the Title I playing process gives us a lot of information. When we started doing this process, it was eye opening how much firms could not tell you about themselves, so we thought we didn't have information. There were a lot of things that if we asked we couldn't get an answer or it took a month of working on spreadsheets. They're well beyond that now. I think -- I don't want to overstate it.
MR. KOHN: Probably just a stress test process, too.

MR. HELD: When we first started planning on Title II, one of the biggest obstacles was how do we get money into the firm by Sunday night, get the yen to Tokyo and the pounds to London and euros to Frankfurt? And it was just assumed that like in the crisis in 2008, it was going to be, oh, there isn't enough money to open for business on Monday or actually Sunday as things go these days.

And with these planning tools, it's less likely that you're going to reach zero and have to do the really heroic efforts to get money where it's needed at the right time.

Luckily, we start off with kind of the worst case scenario and plan for that. Now it appears that that's less likely. And I think the tools really help us a lot.

When we start off, when we ask the questions, and we said, we sent out a lot of questions to the firms and we said I don't know
is an acceptable answer at this point. This was before the first plans came in. And there were a lot of I don't knows that are now in the models and answered and a lot of the I don't knows have been eliminated.

MR. KOHN: So you have confidence that they know.

MR. HELD: Well, there's a lot more confidence than we had in 2011.

MR. TETRICK: There's much better information at the acute phase of a crisis. One of the challenges is there can be a lot of demands on that Treasury desk, both from counter parties, authorities around the world, and then synthesizing that information to their existing monitoring tools in modeling in terms of what's happening in terms of counter parties' ruling, different kinds of parties reducing exposure, increased marginal requirements and working that all into the existing modeling framework I think is where the challenge will be. But their current capabilities, I wouldn't want to
overstate it, but they're much, much stronger
than they were.

MS. ADMATI: I have another question.
I was worried about disruption in this industry
because the biggest banks are so strong that if
you have disruptions like, I don't know, peer-to-
peer, you know, they sort of swallow them or
fintech. So I'm less concerned about Uber type
of disruption, but I am concerned about cyber and
IT. Is that anywhere in your thinking?

MR. TETRICK: So --

CHAIRMAN McWILLIAMS: Don't worry,
Ryan, three chairmen are looking at you.

(Laughter.)

MR. TETRICK: I'll say that, you know,
there's still a lot of work to do on the easy
SIFI resolutions. The cyber SIFI resolution is
pretty extraordinary. I think we've started to
do some initial work on, you know, if there are
cyber scenarios or other operational scenarios,
how do our tools apply. It's the very early days
on that work.
I think there's a lot of work across the regulatory agencies on cyber. Most of that is focused on resiliency, recovery. Resolution is fairly remote, I think for a good reason. But it's something that we know we need to look at.

I think it's also worth pointing out, you know, not just for these institutions, for other institutions and how do our authorities apply to this model firm.

MS. ADMATI: But let's not go to cyber. I'm talking simple IT because I actually talked to some. A lot of these institutions have had a lot of mergers along the way and I talked to somebody who was actually monitoring one of the settlements in one of the big banks who said that IT is the biggest problem because they can't find information. So this is sort of to your planning issue like they didn't combine computer systems. It was really in that simpler things than big cyber.

MR. TETRICK: Capabilities in MIS are essential. So MIS is one of the areas that the
Federal Reserve with our participation is focused on, making sure that this group of firms significantly improve. So I think it was in our guidance.

CHAIRMAN McWILLIAMS: And also I think the supervisory that will be -- the idiosyncrasy of getting a cyber-attack and being brought down is a little bit different because we look at this on the supervisory side. They get IT exams all the time.

MR. BODSON: I've said this a few times today. My first day as CEO was Knight Capital, my first hour as CEO was Knight Capital, right, and the thing that saved the industry from a massive lawsuit that resulted in New York Stock Exchange, New York spotted it, New York turned them off and they capped it about $450 million.

So the point I think you were making before about the second tier firms and them having a -- it doesn't have to be cyber. It can just be a weird glitch, running up a very large tab is something I think I'm more -- I think that's a
bigger risk to the financial system than one of the Big Eight collapsing. I just think that that's an untapped area that we dodged a bullet on but -- there's no kill switch for the markets, etcetera, etcetera.

So I know it's not directly in your purview, but you should be taking that in your -- because it can also just be a settlement system that blows out a few billion dollars and by the way, now how do you get these guys back up on their feet when their settlement systems don't want to work. So those operational technology issues have to be on the agenda at some point.

MR. COHEN: Just back on cyber for one moment. I realize or I understand there's a lot of coordination among the bank regulatory agencies. I'm far less confident that there's that level of coordination with the other governmental agencies which have both more information and more knowledge with due respect than you do, DHS, FBI, NSA. And because everybody always talks about this as an existential threat,
the more coordination you can have, particularly for these eight.

MR. TETRICK: No, that's helpful. The fact that it's a non-financial disruption, brings other authorities into the picture.

MS. ADMATI: I think you're going far with the same method. Last week, somebody was like from emergency and she worked on, you know, hurricane or these other types of emergencies and it was bringing that finance kind of emergency planning.

CHAIRMAN McWILLIAMS: Ryan, because we are at a break time and since Raj just put the burden on other entities and organizations and agencies other than us, you can either conclude here with this part of the presentation, finish up, and then we'll move on to the break and move on to the next panel.

MR. DELFIN: Can I just to wrap this part up? Earlier, we talked about the evolution on our Title I process, the way we started in our silo, the Fed started in its silo and over time we
reviewed plans together, we did training together. Our Title I, Title II process has similarly built real synergies.

We used to have sort of Title I staff and Title II staff and what we really tried to do in our organization is make sure that folks see the way these work together and the way we can use the capabilities, structural changes from one to buttress our preparing for the other and so this slide here on 7 really does a great job of that. So if that's helpful.

MR. TETRICK: Maybe just one more thing on this segment which is that Herb started out, I think we're interested in -- we've done a lot of work in this space, hasn't necessitated as much visibility as the Title I process has, but we're interested in ways to make this work more visible and what market participants and the public may need to see about it.

CHAIRMAN McWILLIAMS: Thank you. We'll take a little break. And see you in about 10 or 15 minutes. Thank you.
(Whereupon, the above-entitled matter went off the record at 2:33 p.m. and resumed at 2:50 p.m.)

MR. DELFIN: We are joined by today by our third panel. We've got Susan Baker, the Deputy Director; Joanne Fungaroli, Associate Director; Ryan Tetrisk, who you've just met; and Bruce Hickey from our legal division.

MS. BAKER: All right. Thank you. So now I'm here to answer, help follow-up on all the questions about how we build international cooperation. Since I thought we'd be running out of time by now, I put all the key messages up front just in case we do run out of time.

As you know, resolution planning in the U.S. is inherently cross-border, both due to their cross-border activities and all the extent of their operations overseas. And so progress on our work for resolution planning we have to discuss are our work with our foreign authorities and how we work with them. It's just unavoidable.

The FDIC has really been leaders, along
with our other U.S. colleagues and others, in promoting regular engagement for resolution planning, both domestically, as Ryan explained earlier, but also internationally.

Now, our plan in cross-border resolution involves investing the time before the crisis, before the crisis hits so we're ready to go when we need to. And that means our outreach activities are very multifaceted. We have firm level interactions, we have bilateral interactions, and we have multi-lateral engagement, as well. These are formal, informal, regular, ad hoc, all different ways. It's a complicated topic, so we try to get at it every way we can.

The purpose here is really to increase the transparency and the mutual understanding of our foreign counterparts about our cross-border resolution plans. In doing this, the idea is, before the crisis comes, to establish communication channels and ways to share information that is safe and well understood, to
understand each other's frameworks and standards
and the vocabulary, you know, what is MREL, what
is TLAC. It's all important to understand and
speak each other's languages. And, important, to
give the firms an opportunity to plan for the
cross-border elements of resolution and to explain
their plans to the foreign authorities. So this
type of transparency and advanced planning we
really do believe will serve as a stabilizing
force in times of stress.

So what I have been asked to do is to
go through all the different ways that we do this,
and so let me start here describing these across
three general categories. So let's start out with
the institution-specific. Ryan touched on this a
little bit before. It's the Crisis Management
Groups is our primary vehicle for doing that. We
have established Crisis Management Groups, along
with the our co-chair, for all the U.S. G-SIBs.

The foreign participants in these CMGs
are the ones that are supervising our
revolutionary authorities for the material
entities that were material to the firm. I think we're on our eighth round of CMG meetings, and, so, as these have developed, you know, I wasn't here for this but in the beginning there was a lot about explaining our authority, what's Title I, what's Title II. And now we have really moved a lot to deeper subjects, and one of the subjects that's been coming up a lot lately and has been a key topic has been how the bankruptcy planning had worked and familiarizing a lot of our foreign counterparts with how that process would work, and it also is a way to give the firm, as I mentioned, a way to explain what they are doing that will be key to a successful cross-border resolution.

MR. HERRING: Susan, I think the FSB, possibly the Basel Committee, had an annual report not too long ago looking at the Crisis Management Groups and sort of trying to kind of, broad brush, describe progress they made. I'd be surprised if the number of Crisis Management Groups that had not completed information sharing agreements, it may happen informally, but the indication was
that, even though these were all about sharing information, some countries were reluctant on obligations to share.

Has that been a real problem, or is that just looking at some old data?

MS. FUNGAROLI: So I think that the primary agency, as a home authority, that would be the one that's working towards completing those arrangements would be the Single Resolution Board, which is a relatively new agency that took its authority in 2016, really got their CMGs up and running in the last year to two years. So that, largely, is the pocket that you noticed in that seventh resolution --

MR. HERRING: Yes, they didn't identify who, so that would be it. It's just they were so slow to organize.

MS. FUNGAROLI: They're pursuing the arraignments as rapidly and reasonably as possible under the circumstances. So I think that the United States, the U.K., and Switzerland and Japan, who all completed our cooperation
agreements largely around the same time in a
synchronized way. We had the benefit of early
organization of our framework and of our groups.

MS. ADMATI: I have a question. I was
trying to check quickly that my timing is right so
I don't confuse 2014 and '16 again, but there was
a document called "Key Attributes," you know, and
I remember reading that because just to kind of
make a case that, you know, by saying the
following, I put the document through a word
search for the word "should," meaning it's a wish
list of all these little things that have to
happen and all the different coordinations that
has to happen and I counted, like, hundreds and
hundreds. And then there was an annex with a
whole bunch of other kind of shoulds that were
just kind of in the list of things without the
word should.

So it was a huge wish list. I remember
Mark Carney was there, and I kind of confronted
him with that. And he said, "Well, it's Paul
Tucker's document."
In any case, I was wondering, my
question really is how many of these shoulds do we
have today?

MS. BAKER: Well, all those shoulds are
still there. The international standards are not
self-executing. We all have to go around and do
them in our own natural jurisdictions and
according to our own procedures here, you know,
the Administrative Procedures Act, that takes
time.

And we do have robust mechanisms, which
I can talk about in a minute, for multilateral
review of how well people are doing that. And the
answer for the United States is pretty resounding
we're doing fine. We have all greens on our
traffic light approach.

But, yes, the key attributes are one of
the, basically it was built on what the FDIC had
been doing for years. When people looked around
the world and wanted to know who had been doing a
good job on resolution, they looked here. And it
was the work of our predecessors, and maybe you,
Art, you were here working on it, Mike Krimminger, Bill Murden, to help launch that process.

So running back to the CMGs just for a minute, we do let the firms present in this topic, so it gives them an opportunity to engage in an efficient manner with all of their key supervisors and resolution authorities. You know, they have been spending a lot of time explaining their plans that they've developed in Title I on pre-positioning of capital and liquidity, explaining their secured support arrangements, and all of those things, wind down plans, communication plans, all the things that they've developed in Title I are of immense interest to the foreign authorities and we do have a lot of time to talk about that. We also have an authorities-only section where we then, they can raise more concerns and questions.

We have also used the CMGs to review our Title II planning and how that works together, you know, how our bail-in mechanic would work, how the bridge banks are established, etcetera,
etcetera, with a big emphasis on, as Ryan said earlier, the optionality idea. Like, we don't know what the crisis is going to look like, but here are the tools and the capabilities that we have that we will use to make decisions.

Just as an aside, before I get off the -- and that's the institution's strategic plans that we talk about with them. Before we get off the firm-specific topic, I'll just flag as an aside that we also participate in the CMGs for a number of foreign banking organizations that have material operations in the United States, and these are really helpful for planning resolution as a host jurisdiction, and it's a complement to what we do in the Title I process where we review their plans in the United States for their IHCs here, and this gives us a window in what their home jurisdiction is thinking about, which is very helpful.

As briefly touched on earlier, I will say an important foundation for the work in the CMGs is to have the information sharing
arrangements and cooperation agreements. These are firm specific in this context, and so we have those all in place thanks to the hard work of Joanne here and her team. And this gives us pre-established ways to share information that is predictable and we know that it will be treated confidentiality and that's all very important.

We also have, it's not up there, but we do this, these are the formal institutions that we have. We also have informal networking all the time with our international counterparts about various firm specific topics, about various firms. We have workshops, for example. Some recent ones had been on international custody operations and on internal TLAC, which I'm sure you guys will want to hear about.

Moving on to the bilateral avenues for engagement, we have for a number of years had FDIC engagement at the staff level with the European Commission. The European Commission is the part of the European apparatus that would have to propose new frameworks and propose new rules.
They're the ones that drafted the BRRD, which stands for Bank Resolution Recovery Directive.

So we talk with them on a regular basis. It's really helpful for them to hear about how we've structured our framework when they're building one from scratch, as we mentioned earlier. So that's been helpful. We also participate in a number of interagency bilateral dialogues that are led generally by Treasury with all of the banking and market supervisors. The longest-standing one is now called the Joint USEU Regulatory Forum, that's with the European Commission; the Single Supervisory Mechanism; and the Single Resolution Board, our counterpart in Europe. I think you guys all heard from Al Kokonig in the last SRAC.

The newest addition to the bilateral menu is a bilateral dialogue with the U.K., which started last year and, as you can imagine, was dominated by Brexit topics.

So moving on to the multilateral efforts that we talked briefly, Ryan talked a
little bit about the trilateral principals-level exercise, which has been a premier multilateral effort that we've been doing with our U.K. and banking union, i.e. Euro, area counterparts. This includes the fiscal supervisory and resolution authorities, so it's really pretty unique. They have met as principals in October 2016 and in April of 2018 and will continue to do so.

These exercises have really helped familiarize the heads of agencies with each other's processes for resolution and identifying some key areas and getting buy-in for key areas for cooperation and, importantly, launched a whole lot of staff work for how to talk at a lot of different levels. So we call it the principals-level exercise, but there's a lot that goes on that prepares for that amongst ourselves. And I think that's been, you know, how will we communicate, how will we cooperate, what will we be able to say, and then start to plan actual systems to make that happen.

And it's been good that this trilateral
has existed in its form. For a while, we had the
U.K. and EU were together, and now they're not,
but all three of these parties have strong roles
as hosts and home. So we have a real balanced
approach to solving problems where we have to
think about it from the other shoe, and I think
that helps us all cooperate quite well together.

The other major multilateral venue for
cooperation is the Financial Stability Board's
resolution steering group. This is the
international standard-setting body for
resolution, and it's covered a lot of topics over
the years. Some recent topics that have come up:
funding in resolution, bail-in execution,
continuity of access to FMI, as well, in
resolution; solvent wind-down of derivatives book.
And the FDIC has had leadership roles in a lot of
these. Ryan was the co-chair for the bail-in
execution group. Rick Delfin also leads a group
that covers CCP resolution. Actually, that's my
resolution but mainly so far focused on CCPs.

And the FSB also undertakes a number of
thematic peer reviews. One of them, there have
been two going on in the last year. One is on the
technical aspects of TLAC implementation, you
know, what are your terms looking like versus our
terms, who has really issued, where have they
issued, what does it look like, and the other one
has been on the resolution planning process
itself, which is one that Bruce has been on, as
well, and he can talk about more later.

You know, these have really served to
showcase the extensive progress that we've made
here and have helped give examples to other
jurisdictions about what they may want to adopt,
as well.

There are two things about the FSB work
that I want to flag that are a little new. Well,
not new, but rising in their importance. The
first is a renewed commitment to transparency and
stakeholder engagement. They now regularly
provide for public comment periods for documents
before they're finalized and do a lot of
stakeholder workshops, I think I've seen Rodgin at
a number of them, to talk about what's happening and to get feedback on the work. Some recent ones there have been on solvent wind-down, disclosure rules for TLAC instruments, you've had some on CCP resolution issues.

So it's a really important thing to start getting more feedback. The FDIC even hosted one of these last September on the margins of the Res G meeting.

The other new thing, and this is coming, that the FSB has been doing is focused a lot more on the effects of reform. And I have a whole process now to start thinking more robustly about evaluating the effects of reform. A lot has happened, for example, since the FSB issued its framework for addressing "too big to fail" in 2010. So they have commissioned a study of the effects of the reforms that jurisdictions have put in place. It's going to be a review of academic research and market data, as well, to try and evaluate how far we have or haven't come in meeting our objectives in the reforms. This work
launches this year, but it won't be completed probably until 2020. And they have built in some opportunities for stakeholder engagement, so I hope to see you all there.

And, finally, on the multilateral front, there is the work by the IMF to do evaluations of jurisdictions under what's called the FSAP program, the Financial Sector Assessment Program. Since 2017, all G20 jurisdictions have committed to do a formal review of their implementation of the key attributes with respect to systemic bank resolution. And so this is almost like our audit function. The IMF goes out and looks at how they're doing, and then they do it in an independent way and the results will be published. So it's another way to make sure that we're all holding each other accountable for all of the shoulds out there in the standard.

MS. ADMATI: It raised somehow, we had discussed TLAC a lot, but sort of some of these legal issues that often come up, you know, in any kind of debt restructuring. Like, the TLAC, does
it matter in which law it's actually issued? And then, you know, you have the subsidiaries in different places in the home and state. Does it matter, you know, that they're always issued in their home country or --

MS. BAKER: I don't think the TLAC term sheet says anything prescriptive on the law, but it has been a topic of discussion in the stakeholder outreach, I think in particular because this is the week that the Europeans have finally agreed at a political level to what their TLAC rules will look like. There was a lot of feedback that was aimed at that.

MR. TETRICK: In the U.S., our firms issue TLAC in the U.S. and the U.S. law. We're very lucky with a deep debt market and our firms can be funded through the U.S. In other jurisdictions, they will fund in the home jurisdiction and in other host jurisdictions, like the U.S. or where there are significant debt markets where they can raise TLAC. It can make bail-in execution marginally more complicated.
They need to solve for bailing in the instruments that are issued under foreign law, but they are working towards that in other jurisdictions.

MS. ADMATI: For example, Deutsche Bank had a lot co-codes. I mean, I don't know if you count or not, you know, these securities. Or in Switzerland, they've always liked co-codes. And so --

MR. TETRICK: Yes, so those are part of their TLAC structure in most jurisdictions.

MS. BAKER: So just to wrap up here, one thing I want to emphasize about these avenues for international engagement is that they are all mutually reinforcing issues that are identified in one group, say, like, in the institution-specific. We'll then take it up to a different level. Is this a bilateral issue that we should talk about with the U.K.? Is it bigger than that? Do we need to talk about it at the multilateral level and try and solve that problem? Some of the problems have come to us or proposed solutions have come up in some of the multilateral context,
and we're like, well, why don't we talk about all of those in the CMGs? So they're always mutually reinforcing, and that, I think, is a helpful way of looking at it.

So with that litany of meetings and avenues for engagement, I'd like to turn it over to Joanne to focus on the ones that are really, the issues that are really important.

MS. FUNGAROLI: Well, you think just getting a group of people together to talk to each other is easy, but actually it can be quite challenging. So I would like to just say that even forming Crisis Management Groups and the other working groups that Susan described have been extremely helpful in building the relationships that we need to have the muscle memory to know who to call and what's appropriate to discuss with them or what needs to be escalated to a more senior level for a consideration.

So with that framework, I wanted to just look back at one of the remarks that Judge Chapman made this morning because it summed up the
work that we're doing internationally very well,
the question of why we have so many venues for our
cross-border work. And what she said was we work
together in a cooperative manner to define our
relationships working with key jurisdictions. You
highlighted in your remarks the U.S. and the U.K.,
which is the genesis of the U.S. G-SIB resolution
planning work in the United States. The U.S. and
the U.K. worked very, very closely together and
then build a framework from there. So there's a
consistency in the thought process that was
described earlier that carries through to the work
that we're doing in our international cooperation,
as well. So thank you for that. You stole our
thunder.

So the work that we're engaged in is
really to try to increase the understanding that
foreign host authorities have in our home
resolution processes and strategies. Susan
identified and talked a little bit about the
Crisis Management Groups. The firms have a very
central role to play in bringing it all together
with the full cohort of global authorities hearing
about the home strategy from the firm's
perspective. And we also then talk with our
foreign hosts regulator to regulator to try to
suss out their reflex mechanism, what are their
sensitivities, what are their concerns, what are
some reasonable ways that we can consider or
recommendation or escalate to others to address
those concerns?

The transparency of resolution plans is
extremely helpful. The public sections of the
plans serve actually as a really useful tool. It's
like the abridged version of the Cliff Notes
version of a Title I resolution plan. We can use
that to talk to foreign authorities who don't
participate in a CMG to familiarize them with the
home resolution strategy overall. And then,
obviously, when we're working with CMG members, we
can go deeper and provide more information than we
would otherwise draw out of the Title I public
plan sections.

But I would just say that those are
extremely useful even for CMG members to have as a handy reference guide, for new members who are coming in to get familiar, to just have a big-picture concept of what the home strategy is that the firm has articulated, and to start identifying questions that they may have as a host jurisdiction.

Ultimately, our goal is the goal of reducing the likelihood of ring-fencing and pursuing avenues to achieve that through the different venues that Susan described earlier.

Our Title I resolution planning process with the firms has been extremely helpful to advance our work. The U.S. emphasis on developing firm capabilities in particular to support resolution preparedness has been well received by our foreign hosts. It gives us something extremely tangible to talk about to use as a reference point in these various discussions.

Some of the capabilities that were highlighted throughout the course of the day that you heard about included mapping critical
functions to material entities, estimating capital and liquidity sources and uses in a more simple language, and making arrangements for pre-positioning to provide that capital and liquidity to key foreign operations.

I think we're going to pause at that last point and talk about that for a minute. Ryan is going to try to tackle internal TLAC and internal liquidity pre-positioning for cross-border resolution for a couple of minutes.

MR. TETRICK: Well, I won't solve it. I'll just recognize that the balance between internal TLAC pre-positioning and flexibility, I think it came up earlier in the day, is clearly an area where there's a lot of focus right now and how do you get that right, and it's something that we're looking closely at.

The FSB internal TLAC guidelines lay out a range of pre-positioning that should be established material entities. You know, in the U.S., the Federal Reserve has a rule that set that requirement in the U.S. at the high end of the
range. I know everybody is looking at whether or not that balance is right here. And as other jurisdictions are putting forward their regulation, they're thinking about what the right calibration is between this 75 and 90 percent that you hear about. So it's 75 or 90 percent of what an entity would need on a standalone basis for external TLAC, they should have that much internal TLAC if they're deemed to be material.

One of the things that --

MR. HERRING: Ryan, does the country then have the right to up it if they start at 70 and say, oh, well, we're worried about this?

MR. TETRICK: The company or the host authority? So --

MR. HERRING: Host authority.

MR. TETRICK: Host authority. So, yes, but I guess the way that this is done is, you know, we set out the requirements through regulation, so the upping the regulatory requirement, we'd have to go through whatever regulatory process you need in that jurisdiction.
MR. HERRING: What other countries necessarily have to do that?

MR. TETRICK: A host could always say we're concerned about this subsidiary, we want to hold more capital or liquidity if using their ordinary supervisory tools. So there's the prospect for that, I suppose.

MS. FUNGAROLI: We'll just pause maybe on one key foreign host of U.S. G-SIBs in response to your question or to elaborate on the answer to your question, which is the U.K. So the U.K., the Bank of England in June of this year adopted a policy statement on MREL, which is European speak for we'll just call it TLAC. It's a simplifying translation, if there's an easy way to translate the terms.

The Bank of England's policy covers both its requirements as a home authority for its firms and it actually said that for its firms, on an outbound basis that are operating in jurisdictions that don't have a rule, unlike the United States, which does as a host, it will
assess it and work with the firms to determine the appropriate level.

As a host jurisdiction, the U.K. also addressed the pre-positioning requirement in its policy. It set the range as 75 to 90 percent. It gave itself the flexibility to make the determination based on a couple of factors, but two stood out to us for purposes of today's discussion. One is the confidence that the Bank of England has and the credibility of the group resolution strategy overall, and the second is the availability of the resources that are uncommitted within the group that could be readily deployed to support the subsidiary and its jurisdiction.

MR. HERRING: I guess what concerns me about that is, if it should change, then it's sort of reflecting they have concerns about the adequacy of resources or the availability. And that's basically one of those signals you really probably rather not have if you're getting into a run-with period.

MR. FISHER: I want to ask an even
harder question than Dick's and ask you to humor me for a moment. I'm very worried that this is -- I understand why we want to pursue this, but I'm afraid it doesn't get to a stable equilibrium as the work you're doing in this area.

Now, I understand cooperation is good and we all should understand one another, but humor me for a moment. Here in the United States, bank resolution takes a weekend and ring-fencing is a problem. Insurance resolution takes years and years and ring-fencing is the answer. Very different models. I understand how each of those models are stable, but when you merge them a little bit I don't think you have a stable equilibrium in game theory terms. Now, that's both an international problem in general but particular given our, what I'll call the Title I - Title II moment that we're going to be going through. So, first, Title II is a hedge. Title II is a hedge on whether we're in my bank world of resolution takes a weekend and ring-fencing is a problem or in the insurance world of resolution
takes years and years and ring-fencing is the answer.

Now, a lot of the good work you all and other countries are doing are going down the path of making sure everyone is comfortable enough with the subsidiaries that you think are not going to rush and ring-fence. I don't think that's a stable equilibrium, particularly in light of our Title I - Title II moment. We're going to come to a -- cooperation across borders is good. We should all understand what each other is doing. I'm not saying that's bad. That's terrific. But at that moment that we're having our Hamlet moment or we're going down Title I - Title II, what's the rest of the world doing? Well, the rest of the world is, more or less, in an insurance world, resolution takes years and years and ring-fencing is the answer. That's just a mental bias they've got, not just in the insurance world.

Now, there's some jurisdictions where that's not the case, but I just think you've got to think hard about whether, and you've got the
nice long quote from Vice Chairman Quarles, who I admire. But it's describing, the more work you do to make people comfortable that the subs are well set up, that also makes it more likely they want to ring-fence.

I know you're going to disagree, but that's because you're coming from a world in which resolution takes a weekend and ring-fencing is a problem, and most of the world sees it the other way. Now, you could disagree with me on that actual observation about the rest of the world, but I want you to think hard about whether it's actually a stable place to be to be halfway between these two models, and that's what Title II is.

MR. DELFIN: Maybe I'll take a quick stab. But, you know, our goal is mitigation of systemic risk, and so if we started our earlier premise that systemic risk is housed in material entity subsidiaries, then what we want to do is make sure that they can continue operating and providing the services that the market requires of
them, and the type of ring-fencing can affect
whether they can achieve that goal.

So if each host jurisdiction has
sufficient resources and maybe soft ring-fences
that says, hey, I'm going to keep a little more
here, but services can continue to be provided,
the home jurisdiction and the other material
entities have sufficient resources to function,
although there's frictions, the friction of each
host being a little more protective than they
otherwise would have been, that need not destroy
the strategy. It's an unfortunate outcome, and
our Title I process is based on frictions
occurring. That is that jurisdictions are not
going to just allow the free flow of funds.

So we assume some degree of friction,
but there is a tipping point where if you have
hard ring-fencing, if resources are stuck in a
jurisdiction and it undermines the ability of the
other jurisdiction to function, you start having
real problems. That's what we're trying to avoid.

So the small stuff within the band of
everyone is having a little bit of self-interest and protecting themselves. But the hard, sorry, I'm protecting myself and shutting off the rest of the world, that's a problem.

MR. FISHER: The insurance world here in the United States is premised on we'll let things flow across but the regulatory will decide. Things will flow out of subsidiaries back and forth to holding companies, but the regulatory decides.

Your soft world is what are the regulators deciding then, and I'm just suggesting you may have made a distinction that I don't think is a difference. That is, I'm calling that ring-fencing. The regulator is deciding, and I just --

MR. DELFIN: But if it doesn't undermine the strategy, why is it -- so if the regulator decides to let it go or decides to allow the service to be provided and it doesn't undercut the strategy --

MR. FISHER: Well, if I look at your
slide up there, imagine instead of the arrow
saying reduced likelihood of ring-fencing we
insert learning how to live with ring-fencing.
And I just think that's the world you're going to
be in, especially once you think hard about the
rest of the world is holding its breath while
we're making the Title I - Title II decision. And
they're not going to sit still there.

MR. DELFIN: Yes. One thing we, and
I'm asking because of the parlance, when this
started there was ring-fencing, you know. It was
almost like a wall, a fortress. But pre-
positioning, some say, is a form of ex-ante ring-
fencing, but services can continue to be provided,
flows or funds continue to occur, but there's some
amount of money that's held in jurisdiction.

And so do you distinguish between the
idea of hard ring-fencing, fortress-like walls
versus soft ring-fencing that each jurisdiction is
going to have some self-interest to protect itself
but they're also not going to unnecessarily
complicate the resolution strategy? Because I
think we're built on that second idea, that
everyone will have self-interest but they also
don't want to undermine the group. I don't know.

MR. FISHER: When you describe that
second, you're describing from in the insurance
world the whole world over, not just the west.
That is, things flow but regulators decide, and
there's a lot of inertia and timing is hard. When
you say hard ring-fencing, I think you're
expressing an American-centric view that ring-
fencing is bad and that we can see what happens
with extreme ring-fencing, extreme lack of
cooperation. And I'm suggesting think about a
world where everyone is holding their breath
waiting for the U.S. to decide Title I or Title II
and worrying which path we go down and what the
consequences are, and their tendency is going to
be to be a little more ring-fence-y at that
moment.

MR. DELFIN: Agreed.

MR. FISHER: And I'm suggesting
learning to live with ring-fencing is a more
profound ambition than trying to pretend it's not going to happen.

MR. DELFIN: So that's the last part I'm just going to push back slightly on, which is in our Title I process we distinctly assume that there are frictions associated with the flow of funds from material entity to material entity. So we're not trying to be naive about ring-fencing not occurring. It's just the degree of friction that --

MS. BAIR: One thing that's new, and I agree with you, but one thing that's new, at least as we're talking about a Title II resolution, is the ability of the FDIC to provide funding support at that level and world commitments to the foreign regulators to not cut their whatever operations and keep liquidity, you know, the liquidity will flow both ways, right?

So that's something new the FDIC has. That's a new conversation they can have with foreign regulators that they didn't have before. Now, whether it works or not, I don't know. But
I kind of think that we'll have soft, not hard, ring-fencing, at least in a Title II. I think it's harder on Title I. And, again, if you have really strong backers in financing, maybe you don't have a problem there, too. But with Title II, at least, the FDIC can say that now and they weren't able to before.

MS. BAKER: And to the extent that this is, as you mentioned earlier, kind of a classic prisoner's dilemma, right? And everyone thinks if I move first, I'll be better off. But when everybody moves, everyone is worse off.

You know, the classic solution to a prisoner's dilemma is information and trust. And so that is what we do in all this litany of meetings is we try to build that information, we try to build the muscle memory, what will we talk about, commit to what we'll talk about, build the systems to make that happen.

MR. COHEN: Well, could I go just for a moment? I would add a third, if I could, which is capacity. And this is what I think is -- well,
let me start with a premise, and we'll push this a second time. If the U.S. is at 90 percent, there is no chance the rest of the world won't go to 90 percent. So it's really up to us. If we go to 75, the rest of the world may or may not follow. But if we're at 90, you can be sure everybody will follow.

So I look at this and I worry that we're looking at this through the wrong end of the telescope, and the right end of the telescope is the capacity of the parent to provide assistance if there is a problem. If you've already used 90 percent, there is far less capacity to solve the problem. You look at the individual subsidiary, 75 to 90 percent is of a fraction, whatever that fraction may be of the whole. But when you're looking at the totality and what is left, it's 75 to 90 percent of the entirety and it's a much bigger number. And if you constrain the ability, to me, flexibility should be the watch word, and I can't imagine, frankly, a country saying, well, at 75 percent I wouldn't ring-fence but at, 75
percent I must and at 90 I won't, that's not going to happen because the loss will be too big and people will know there's no capacity to help out. So I just couldn't argue more strongly than I can now for really taking the leadership role and going at 75. And I actually share Peter's view inherently. I would go to 50 if I thought that had the slightest chance.

DIRECTOR GRUENBERG: I would say we have not yet executed a resolution of the G-SIB. No country in the world has. And so we're all talking hypothetical at this point, so you've got to qualify it. And until we actually do it and see what that experience is like and what actually happens in the circumstance, you know, you can't speak with confidence.

What I will say is that I do believe the whole international arrangement here in regard to these global financial terms has changed significantly over the past ten years, that the major jurisdictions that are the home and host of these major firms have spent a lot of time over
these last several years passing laws, developing
capabilities, and talking to each other about what
we would do together if one of these firms in
which we have mutual responsibilities gets in a
difficulty.

And the whole premise of every
discussion, every collaborative effort is how do
we avoid closing borders and the disruption that
everyone understands that would cause the
financial system. And I can only tell you that
the premise of every conversation we've had, just
one little indication of it is, and Rodgin alluded
to this, if the home jurisdiction can demonstrate
the capability of meeting the obligations of the
firm domestically and internationally, it is not
in the interest of the host jurisdictions to screw
around with that. The optimal outcome for
everybody is to keep the institutions functioning
and the borders open, at least that is the premise
of all of the work and that is at least my
perception of where people's self-interest is.

Now, the second there is significant
doubt in the foreign jurisdiction, including our own, about the capability of the home jurisdiction to meet the obligations, then you're dealing with a different circumstance. And the whole premise of our efforts, and it's fundamentally a handful of jurisdictions that we're talking about in terms of being home and host to these truly global firms and for us it's fundamentally the U.K. and the Europeans. In terms of U.S. operations, that's really, you know, the ball game. And I think there would be every effort, which is not to say we haven't done it yet, and I understand the skepticism and I think that's fair until we actually do it. But I do think the operating premise will be how do we make this process work and how do we avoid ring-fencing is going to be the threshold premise of the responsible authorities and we'll see if we can actually execute it.

And I can tell you we had one circumstances in which there was, without getting specific, there was a potential enforcement action
in the United States against a foreign firm that
had the potential of, it was uncertain what the
market reaction might be. And there was extensive
interactions leading up to that among the key
jurisdictions as to what we would do, and it was
quite clear that, as long as the home jurisdiction
of the firm was prepared to meet the obligations
of the firm in the foreign jurisdictions,
including our own, there was no interest. In
fact, the self-interest was to not intervene, and
we got those representations from the home
jurisdiction and that was our operating premise as
this thing -- at first, there was no market
reaction and never had to be tested. But do I
believe that the home jurisdiction would have met
the obligations if it had been tested? Let me
just say I would be surprised if they didn't, and
they certainly understood there would be
consequences if that didn't happen.

So, you know, that's the operating
premise. It's a set of relationships and
capabilities in each of these major jurisdictions
that did not exist ten years ago. Ten years ago
there were no discussions around this subject.
There were no authorities around this subject.
There was no strategic thinking around this
subject and there was no planning around this
subject.

Now, I don't know if it will be
different if and when this occurs. I would not
operate off the premise that ring-fencing is going
to be inevitable. It may play out that way.
We'll have to see it. It certainly has been the
object of all of our efforts to avoid that outcome
because, at the end of the day, if that is the
outcome, most people understand that's a lose-lose
situation for everybody involved.

MR. KOHN: But, Peter, what part of
your point that I took it was deep skepticism that
Title I will work, especially -- so what you said,
Marty, is as long as they have confidence that the
home country can execute this, but if you have
these people sitting there debating should I do
bankruptcy, should I do Title II, and you don't
think, you're the host country and you don't think
bankruptcy is going to work certainly before any
reform by Senator Toomey, and even then the
liquidity issue is still kind of up in the air.
I don't think we've had a really good answer to
that here. Then you might be, then your point
would be you don't have confidence that the thing
is going to work, that the politics will push the
U.S. into Title I. We keep saying that's our
preference, but you have deep doubts it's going to
work and your obligation is to grab what you can
get.

MR. FISHER: Yes. And that's
certainly, that's the fine point of what I call
the Title I - Title II moment we're proposing on
the rest of the world. And I'm happy to know
Marty's confidence in what's happened over the
last ten years, but I still, I hear you saying
you've developed the capacity to make de facto
ring-fencing work with other countries you trust.
I don't hear you saying we're not going to be
carefully monitoring flows in and out of each of
our jurisdictions at all. We're going to just let laissez faire take hold here.

And so that is actually more like ring-fencing in the insurance world. And I want you to see linguistically you're using the term ring-fencing bad, what we want to do good, and I think you're also describing a world you've invented through ten years of discussions that's much more subtle and complicated. And in the game theory moment, the Title I - Title II moment is going to lay on top of that.

MR. COHEN: Okay. So just to pick up very quickly on that, I think you make a critical point here with your Hamlet reference. It didn't work out so well for him, so, you know, it's really critical here that that decision be made immediately.

DIRECTOR GRUENBERG: Let me just say again it's contrary to all of my experience. I don't see us having a Hamlet moment here, to be candid about it. Given we don't know what the circumstances --
MR. FISHER: Our present company not included. We're referring to people outside this room.

DIRECTOR GRUENBERG: You know, we're dealing with one of these global firms. We're going to assess the risks and make a judgment, and I don't see us going back and forth for weeks and trying to, agonizing over that call. You don't know how sudden it's going to move. But assuming there's some planning opportunity, some line of sight into the problems as they're developing, I think it's going to become pretty apparent to the responsible authorities of our government what we're going to have to do one way or the other, what the nature of the firm is, and I think we're going to be communicating that to our counterparts and we're going to be working very hard to get on the same page if, indeed, that's where we're heading on this thing to bring this together and that everybody knows what we're going to do, when we're going to do it, and execute it. And then the question is, you know, can we execute it
successfully because even if you do all of that, the operational changes here, even if everything is good, you know, particularly until we do it the first time, the risks are significant.

But I don't see, I see a different set of, I don't see a Hamlet issue and I don't necessarily see the other foreign authorities going back on all of the work we've done over these last several years. What I do see is, boy, this is a big challenge to carry out, and the ability of our authorities and the foreign authorities to work together and execute this in a way so that it happens in an orderly matter without undue disruption, that is the thing that I would worry the most about from where at least I've sat. You know, you may be right, but I worry, for what it's worth, less about that than I do as can we pull this off from an operational standpoint.

MS. ADMATI: So when you're referring to ten years ago, I mean, I think the benchmark there is that there was tier 2 capital. I mean,
the words keep changing, so it was called tier 2 capital or trust preferred or something else that was counted as losses and it wasn't. And there were, I understand, some memorandum of understanding about things, so I'm sure it was different because, in the end, nobody observed losses. In other words, the creditors were paid in full, even in institutions that were bailed out.

So that's the starting point of now it's going to be different. But my worries that you've been working with all these other regulators and it's really about the legal authority and about the political people that will have a tendency to ring-fence because of their constituents. So when there are all these understandings and these relationships, we work out for all of us and exactly how. So worrying is good, right?

MR. TETRICK: I think, going back to where this conversation started on internal TLAC, part of the goal there is to give hosts confidence
so that they don't need to do further undue ring-fencing.

And picking up on Rodgin's point about the importance of flexibility, you know, we can't answer the question in this forum what's the right level, but, you know, from a home authority perspective, you can understand why having some flexible tool to meet needs where they might arise. We don't know where it's going to be most acute. It's helpful to have some degree of flexibility.

I think one thing just to acknowledge that's a factor in that conversation is if you have lower pre-positioning in a bigger pool of contributable resources, part of that discussion that's been around is how do we know that pool is going to be there, is it visible to host authorities, and what are the controls around it? And I'll just say that the work that we've done on the capital positioning framework in Title I is pretty helpful in that regard in that it defines what that pool of resources is. I don't think
anybody else has that. And it gives hosts some understanding of how it might be used over the course of the runway.

MR. COHEN: This is why the point, Susan's earlier point, you need the confidence and the cooperation or else it doesn't make a lot of difference. So I think all three have to work together.

MS. BAKER: And the fact also that our firms have already done this pre-positioning, even in countries where there hasn't been a rule requiring them to, is doing a lot of work for us, as well, in terms of building trust. And the fact in the CMGs they talk about that, how they calculated what they're doing, what are the numbers in the various material legal entities, and what would be the plan if they did go into bankruptcy to make sure that that is distributed out.

So, I mean, I think that the foreign authorities would know, at least for those material entities, what they would be getting.
MS. CHAPMAN: Can I just chime in?

Because this is a point that's come up when we've had engagement with foreign regulators in the U.K. and in various international conferences. And when they hear what status would be afforded to the regulators in a U.S. Chapter 11/Chapter 14 of U.S. G-SIB, first they're surprised, then they're relieved, then they're happy because, once they hear that the regulators would be parties in interest, that their views would actually form part of the evidentiary record, that just because now this bankruptcy judge that they've never heard of before is going to very much involve the regulators, it raises their comfort level and it makes them much more enthusiastic and willing to engage and less afraid of the process.

And I think the point that Ryan made about flexibility around pre-positioning, which picks up something that Rick started the day with, is also very critical.

The other thing that happened when Lehman filed that that is absolutely avoided is
there's a filing and you can't operate your trading system because the intellectual property is in Hong Kong and you don't have a way of getting at it.

So just operationally and structurally, there's been a huge, huge step forward and maybe a Pollyanna view of the world I could see a situation in which in a regular Chapter 11 in the United States we will have non-debtor foreign entities and there will be funding that's provided. And, you know, we always are nervous about money leaving the debtor group, but you can track it, you can make mechanisms, you know, for bringing it back and forth and trying to maintain business as usual. Whether that would be possible in the world of a G-SIB filing, you know, no one knows, but, at least theoretically, it is possible if things work remotely the way they're supposed to work.

MR. HERRING: I'll circle back to an issue that came up this morning. Is the intermediate holding company, if it has proper
governance around it, a partial solution to this? The question is, you know, if a country can be satisfied that means are available and will be used when necessary and don't have to be right here in the bank that I control, then it seems to me that you do get a lot more flexibility.

Is it possible to have a transparent governance mechanism so they realize it's going to be automatic or at least very, very reliable that whatever they have locally can be augmented, if necessary, from the intermediate holding company?

MR. DELFIN: It can be. I think there's tradeoffs. We started this process from a Title I legal impediments perspective, so, you know, we were thinking if a firm was doing this and the assumption was they were downstream, let's say at the last minute, and there were clearly legal challenges associated with that, and so if you look at our guidance this falls in our legal obstacles bucket because that's the way we first came to the thought. And it was only considered the following mitigants to that legal obstacle.
You could have an IHC, you could have pre-positioning, you could consider binding mechanisms or support agreements. That's the way we came to it.

Over time, you can see how an IHC could provide some degree of flexibility because it could be a pool that could move in to whichever material entity might need it.

MR. HERRING: Yes, I was thinking about that.

MR. DELFIN: So there is some flexibility in there. It's more flexible than if you pre-positioned with each of them.

MR. HERRING: But on the other hand, the host countries would have to be satisfied that not only is it there but it will be used.

MR. DELFIN: Exactly.

MR. COHEN: And it goes back to the independent directors at the IHC. So it actually has a really, you know, I agree, that's exactly the origin of the IHC, but I think it has the benefits that it's referring to.
MS. BAKER: Everybody is thinking about flexibility versus certainty, including our colleagues at the Fed. Just to wrap up quickly on things because everyone needs to end up with a next steps slide, it goes without saying that we will continue to be having our firm-specific meetings and our bilateral dialogues. And I didn't put them up there. I thought I'd focus on a few things you might not be as aware of. The multilateral efforts continue. The FSB just put out its seventh annual report of the G20 on progress towards resolution and adhering to the key attributes we're all bringing, but it is a way to continue to keep the pressure up.

As I mentioned earlier, the FSB is also launching this multi-year effort to evaluate the effects of reform and looking at their framework for adjusting "too big to fail." We also will be, we've been undertaking reviews of the technical implementation of the TLAC standard. That is coming out, and the resolution planning process itself, Bruce has been on that. And maybe you
could talk just very briefly about that and how we are using that as sort of a vehicle for transparency.

MR. HICKEY: Sure. You know, the FSB members have been undertaking this peer review. They do peer reviews periodically. They've done there. This is a third one on resolution issues. The first one was chaired by former Chairman Gruenberg. This one is on resolution planning. They basically want to get a sense across the 25 FSB jurisdictions where are they in terms of actually having frameworks for resolution planning.

And we wanted to highlight this as a good example because it shows a lot of what our priorities are in undertaking this kind of multilateral engagement. I mean, the gist of it is they just want to issue a report, having done extensive survey through questions and bilateral conversations with all 25 jurisdictions as to what are you actually doing about resolution planning.

No surprise, you know, I don't want to
preview too much what's going on, but, you know, certain jurisdictions that are home to the large institutions are doing very well. There's still a lot of work to do on other jurisdictions.

But the thing we wanted to highlight what's so impressive, we think, about this type of work and the opportunities that it affords us it the fact that, principally, what this does is produce a report and it's a factual report. It's not about listing a bunch of prescriptive guidance but sort of saying to the world, here, transparent fashion, here is what all the FSB jurisdictions are doing.

The review is undertaken by -- it's a peer review. It's undertaken by representatives from agencies that are represented in the FSB. And what you have is instead of you should do this and not be doing this, we're just saying here's the continuum of options that you have as policymakers in thinking about resolution planning.

Secondly, what I'll say is that we've
built into the process, as is true throughout many FSB efforts, engagement with the industry. Just last month, we had a workshop with banks, with law firms, and with consultants, in which we asked them to take a look at some of the issues that we were trying to cover and to get their perspective. Certainly, from a U.S. perspective given that the firms are the subject of all this resolution planning work, it was important to hear from them. And I think this accomplishes two things: one is it results in work that is far more well developed in terms of its overall perspective and then, finally, getting back to the transparency issue, it is a way of communicating tangibly to firms and to the public sector, to the public, the fact that regulators are, in fact, working together on some hard issues. I mean, I'm sympathetic to the idea that we've heard this in various other settings that they kind of have to take it on faith that there's a lot of work being done cooperatively amongst regulators and that we are making progress. But as Susan mentioned earlier, in
context like the CMGs where we bring the firms in and they see all of us sitting around the table and we barrage them with questions for half a day and in things like workshops that are associated with various FSB work, firms get to see that, in fact, regulators are working together and trying to advance the ball.

MS. BAKER: And just to wrap up, I'll quote my chairman who said on the topic of international cooperation there is no magic bullet, we have to just keep talking. So with that, I took your talking point.

CHAIRMAN McWILLIAMS: Thank you. Well, that brings us to the conclusion of the Committee's meeting today and, first and foremost, thank you to the staff who have not only worked hard to prepare for this Committee meeting, and I'll quote Ric Delfin who said, "I just need to survive Thursday." To everybody else on staff at the FDIC who not only sat bravely here briefing the three chairmen, current and former, and a former vice chairman of the Federal Reserve and
the Lehman judge --

(Laughter.)

CHAIRMAN MCWILLIAMS: -- but was taking questions and being barraged by some of the smartest people in the world on these topics. So thank you all. I know how much work went into this and you did an excellent job.

I have a couple of minutes for my closing remarks, but, truly, I am the beneficiary of the hard work done with the FDIC, and under the 19th chairman, Sheila Bair, and under the 20th chairman, Marty Gruenberg, so I think it's only appropriate that the 21st chairman yield some time to the 19th and the 20th and allow you to do some closing remarks for today. And thank you again to the staff.

MS. BAIR: Do it in numerical order?

(Laughter.)

MS. BAIR: Thank you, Madam Chairman. And I appreciate the opportunity to be on this advisory committee. I appreciate your invitation. I've been a little rusty on this, so, hopefully,
my questions and comments have been helpful. And you've been tolerant to have two former chairs and a lot of other smart people pontificate, but you're going to be the decision-maker and you wisely held your cards close because, right, there are no answers to these questions and you can't be too definitive about it because if you are then you're going to end up having probably to do something else.

So I think it's amazingly helpful. I served on this committee, actually. I had one meeting before I stepped down as chair, but I'm glad Marty continued it, I'm glad you're continuing it. And I will turn my phone off. So it's been helpful, and I look forward to future meetings. Thank you.

DIRECTOR GRUENBERG: I should say, for me, the underlying theme here is continuity, and Sheila did establish this committee, I continued it, and I think we're both very grateful that the new chairman is continuing this committee and the commitment of this agency to this important work.
And it's been over two years since this committee met, so I hope the presentation today, if nothing else, persuades you that we just haven't been sitting around.

(Laughter.)

DIRECTOR GRUENBERG: We have been doing a little bit of work here and paying some attention to this issue. I think the staff who's briefed you here today really demonstrate an extraordinary level of engagement and expertise. There's, at least in my experience, no group anywhere else at any other institution more deeply engaged or more expert in this challenging, really, new area of financial regulation, and we're fortunate to have them.

And I would close on the point of continuity that it did strike me that most of you, frankly, have been members of this advisory committee from its inception. And given the nature of this, which is really, I think it's one of the reasons we've been able to attract such an exceptionally distinguished group is this is sort
of interesting stuff and it's important, so it continues to engage our attention and yours, and we've been the great beneficiary of your participation. You give us a hard time, but that's why we have you.

(Laughter.)

DIRECTOR GRUENBERG: I can go around the table. So thank you, thank you all.

CHAIRMAN MCWILLIAMS: This Committee meeting is adjourned. Thank you, everybody.

(Whereupon, the above-entitled matter went off the record at 3:55 p.m.)
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